

1 **(The following proceedings were then had in open**
2 **court, in the presence of the jury.)**

3 THE COURT ATTENDANT: All rise. Come to order.
4 Department 45 is once again in session. The Honorable
5 Judge Judy Hersher presiding.

6 You may be seated.

7 THE COURT: All right. Miss Clement, who is our
8 next witness?

9 MS. CLEMENT: Susan Rotella, pursuant to Evidence
10 Code 776.

11 THE COURT: All right.

12 (Pause.)

13 THE COURT: Miss Rotella, if you would please come
14 forward to our witness stand.

15 And when you get there, please remain standing,
16 raise your right hand, and face the clerk.

17 THE CLERK: Do you solemnly swear the testimony you
18 are about to give in the cause pending before this Court
19 will be the truth, the whole truth, and nothing but the
20 truth?

21 THE WITNESS: I do.

22 THE CLERK: You may have a seat, please.

23 Can you state your name and spell it for the record.

24 THE WITNESS: Susan Rotella, R-O-T-E-L-L-A.

25 THE CLERK: Thank you.

26 TESTIMONY OF

27 SUSAN ROTELLA, a witness called pursuant to 776 of the
28 Evidence Code by the Plaintiffs:

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CROSS-EXAMINATION

BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
the Plaintiffs:

Q. Good afternoon, Miss Rotella.

Can you please tell the jurors, did you work at
Emeritus at some point in time?

A. Yes.

Q. And what was your job title?

A. I was the Vice President of Operations for the West
Division.

Q. And is that California?

A. Yes, that was California. All communities in
California.

Q. Okay. So I just want to orient everyone as to why
you're here. Now I want to tell them a little bit about
your background.

Can you please tell the jury what your educational
background is.

A. I earned a Masters of Business Administration from
the University of Michigan and a Bachelor of Business
Administration in Public Accounting from Hofstra
University.

Q. Okay. And prior to coming to Emeritus -- so let me
just back up.

So you have an MBA; is that right?

A. Yes.

Q. And then you have a Bachelor's degree in public
accounting.

1 So have you ever been a CPA?

2 A. Yes. I'm certified in the state of New York.

3 Q. Okay. And so that's what people normally think of
4 as an accountant, true?

5 A. I don't know.

6 (Laughter.)

7 Q. (By MS. CLEMENT) Okay. Now, can you tell us a
8 little bit about your work experience before you came to
9 Emeritus.

10 A. I have 20 plus years in mid and senior level
11 management and consulting positions in marketing,
12 operations, finance, and client services. I've worked --
13 my experience prior to senior living was in a myriad of
14 industries, including technology, wireless, and media.

15 Q. And when did you first start working in the senior
16 living industry?

17 A. In 2002.

18 Q. And can you tell the jurors your background in the
19 senior living industry up until the time you came to work
20 as a Vice President of Operations for Emeritus.

21 A. I started my career in senior living as a Vice
22 President of Operations, working for a company called
23 Sunrise Senior Living. And I was the Vice President of
24 Operations for their west division, which included Northern
25 California and Washington state.

26 After Sunrise Senior Living, I worked for a
27 not-for-profit senior living company called Northern
28 California Presbyterian Homes and Services, and I was their

1 Vice President of Operations, and of marketing, starting in
2 2006.

3 And in 2009, I interviewed with and was hired by
4 Emeritus Senior Living. And subsequent to my departure
5 from Emeritus, I have held numerous consulting assignments
6 with CEOs of various senior living companies in the U.S.
7 and in Canada.

8 Q. Now, can you tell us about the -- your process of
9 being hired as Emeritus. How did you first learn about the
10 position?

11 A. I saw a posting on Emeritus' website for a
12 Vice President of Operations of the West Division which was
13 to be headquartered in California. And I responded.

14 Q. And can you tell us about your interview process
15 with Emeritus.

16 A. After submitting on-line my -- my application, I
17 also sent a separate letter, cover letter, and my resume to
18 the head of HR. And I was called by HR for a screening
19 phone call. And they subsequently set me up to have a
20 one-on-one phone call with the hiring manager, Chris Hyatt,
21 who had recently been promoted to the Senior Vice President
22 of Operations for Emeritus.

23 Subsequent to my call with Chris, he asked me -- or
24 invited me to attend an all-day interview in late October,
25 2009, which I attended and then was subsequently offered
26 the position.

27 Q. And where was that all-day interview?

28 A. The Seattle headquarters of Emeritus.

1 Q. And who interviewed you during that Seattle
2 interview in late October of 2009?

3 A. I interviewed primarily with Chris Hyatt for the
4 longest time period, and then with Chris' counterparts and,
5 at the time, the EVP, or she might have been the SVP of
6 marketing, and of sales, and the EVP of quality, and
7 Melanie Werdel, who was and is the EVP of administration.
8 And I believe I met with one or two HR employees.

9 Q. So sales and marketing, was that Jayne Sallerson?

10 A. Yes. That was -- she's marketing. John Cincotta
11 was the SVP of sales.

12 Q. And then quality services, was that Budgie Amparo?

13 A. Correct.

14 Q. And did you also meet with Chris Hyatt in that
15 interview?

16 A. Yes.

17 Q. And did Chris Hyatt have anything to say to you
18 about your resume during your interview with him?

19 A. Well, he was happy to know that I had managed the
20 similar territory for Sunrise Senior Living, so I had
21 experience in the territory and with the exact same
22 products, or services, assisted living, memory care, and,
23 also, skilled nursing, since they had just acquired some of
24 Sunrise's previously managed properties. And he also was
25 very happy with my background because I was primarily a
26 person who was focused on doing turnarounds and startups.
27 I'm not a maintenance girl.

28 And so he could tell from my resume that I have

1 quite a bit of variety in my background. And when things
2 kind of slowed down, I would change jobs or take a
3 consulting assignment. And he understood and appreciated
4 that I was a turnaround person, but also asked me for a
5 two-year commitment.

6 MS. BADAWIYA: Your Honor, we're getting into a
7 narrative.

8 THE COURT: Let's go a little bit more question by
9 question.

10 MS. CLEMENT: Could she just finish that last
11 answer?

12 THE COURT: I think she did.

13 Did you have anything else to add?

14 MS. CLEMENT: I couldn't actually understand what
15 she was saying because Miss Badawiya spoke over her.

16 THE COURT: He understood and appreciated that I was
17 a turnaround person, but also asked me for a two-year
18 commitment.

19 MS. CLEMENT: Okay. Thank you.

20 Q. (By MS. CLEMENT) So did you give Mr. Hyatt a
21 two-year commitment if he was going to extend the offer to
22 you?

23 A. Yes. I was -- I was happy to. And I understood
24 there was plenty to keep me busy in two years.

25 Q. And did Mr. Hyatt in your interview with you tell
26 you anything at all about what challenges you would be
27 facing in California?

28 MS. BADAWIYA: It's vague, your Honor.

1 THE COURT: She can answer.

2 THE WITNESS: Yes. Really from my first telephone
3 conversation with Chris Hyatt, who had just become
4 responsible for the California region, since he was
5 promoted now over all operations, where previously he had
6 been in charge of another region, he told me how challenged
7 the California region was. And, um, he was quite
8 descriptive with the things that were wrong with California
9 and how it was dragging the stock price down, and I could
10 be a hero if I could turn it around because any little
11 change in California would greatly and positively impact
12 their earnings.

13 Q. Did Mr. Hyatt have anything to say to you about --
14 or strike that.

15 Who was -- to your understanding, who was your
16 predecessor in that position?

17 A. A woman named Catherine Ratelle.

18 Q. Did Mr. Hyatt have anything to say to you about your
19 predecessor in that position?

20 A. Well, first --

21 MS. BADAWIYA: Your Honor, it lacks foundation. And
22 it's 352. It involves personal information.

23 THE COURT: I'm not sure what the -- excuse me.

24 MS. BADAWIYA: I'm sorry.

25 THE COURT: Could you explain the relevance, please.

26 MS. CLEMENT: Yes. It goes directly to
27 Miss Ratelle's testimony, Catherine Ratelle's testimony.
28 It's impeaching.

1 THE COURT: Then we need some foundation.

2 MS. CLEMENT: Okay.

3 Q. (By MS. CLEMENT) Did Mr. Hyatt tell you why
4 Miss Ratelle was fired from her position?

5 A. Yes.

6 MS. BADAWIYA: Your Honor --

7 THE COURT: Go ahead.

8 Q. (By MS. CLEMENT) And what did Mr. Hyatt tell you?

9 MS. BADAWIYA: Your Honor, that seeks personal
10 information. And it's 352.

11 THE COURT: This is a witness who testified in this
12 trial, who gave testimony.

13 She can answer.

14 THE WITNESS: Could you please repeat the question.

15 Q. (By MS. CLEMENT) Yes.

16 Did Mr. Hyatt tell you why Catherine Ratelle was
17 fired?

18 A. Yes.

19 Q. Can you tell the jury what Mr. Hyatt told you about
20 why Miss Ratelle was fired.

21 A. He told me that she was not competent to run the
22 California division and that under her leadership some very
23 poor decisions had been made, and the financial results of
24 the California division had suffered under her command, and
25 that he told the CEO, who had just recently offered him the
26 promotion, that for him to take the promotion, the CEO
27 would have to fire Catherine Ratelle.

28 Q. And who was that person that he was referencing?

1 A. Granger Cobb.

2 Q. And during your interview with Mr. Hyatt, did he
3 tell you anything else that you recall about why they
4 wanted you to be in this position as the Vice President of
5 Operations?

6 A. My understanding was that Catherine wasn't
7 particularly good with numbers, and that as a person who
8 had a strong financial background, I would more quickly
9 appreciate what the issues were and implement changes.

10 Q. And as a result of your interviews with Mr. Hyatt,
11 the HR department, Budgie Amparo, Melanie Werdel, John
12 Cincotta, Jayne Sallerson, were you then offered the
13 position?

14 A. Yes. Subsequent to my all-day interview, I was
15 verbally offered the position within a day or two.

16 Q. And what were you told about your offer?

17 MS. BADAWIYA: It's vague, your Honor.

18 THE COURT: Sustained.

19 Q. (By MS. CLEMENT) Were you told by Mr. Hyatt that it
20 was a unanimous decision to hire you?

21 A. Yes.

22 Q. And did Mr. Hyatt later put that in an e-mail to
23 everyone, including yourself, in the California division?

24 A. I believe so, yes.

25 Q. And prior to you coming on board as the VPO for
26 California, to your understanding, how long of a time had
27 there been a lapse without a Vice President of Operations
28 permanently in that position, since Miss Ratelle had been

1 fired?

2 MS. BADAWIYA: Calls for speculation. Lacks
3 foundation.

4 THE COURT: Sustained on foundation.

5 Q. (By MS. CLEMENT) Did you have an understanding of
6 how long it had been that the -- the California division
7 had been without a Vice President of Operations?

8 A. Yes.

9 Q. And how long had that been?

10 A. Approximately five months.

11 Q. And what was your understanding as to how
12 California, the Vice President of Operations' position was
13 being run in the five-month period of time?

14 A. The Vice President of Operations for the southwest
15 division, Chris Belford, was overseeing the position, as
16 well as his own division, for the five months that they
17 took to recruit a new candidate.

18 Q. And when you came on board as the Vice President of
19 Operations, did you -- were you taught about this
20 collaborative team management approach (indicating) that
21 they had at Emeritus?

22 A. Yes.

23 Q. And was it your understanding that it would be you
24 as the Vice President of Operations, the Vice President of
25 Sales and Marketing, and a Vice President of Quality
26 Services, or nursing?

27 A. Yes. That's the structure.

28 Q. Okay. And when you started with the company, did

1 you have anyone in the sales and marketing position?

2 A. No.

3 Q. Who was responsible then once you came on board for
4 the sales and marketing?

5 A. We had part-time assistance from John Cincotta, who
6 was also responsible, of course, for the entire national
7 sales strategy. And since I'd managed sales many times,
8 and it's very close and intricate to what we do in
9 operations, I did double-duty.

10 Q. Okay. Now, after you were offered the position,
11 what was your next visit to Seattle? Did you have another
12 visit following that?

13 A. Yes. Prior to officially coming on board, I was
14 invited to attend a two -- two-day divisional meeting of
15 the Vice Presidents of Operations. Chris Hyatt in his new
16 position as Senior Vice President of Operations was
17 bringing his team together, kind of a kick-off for the 2010
18 year.

19 Q. Okay. And can you tell us, what happened at that
20 two-day, kick-off divisional meeting?

21 MS. BADAWIYA: It's overbroad.

22 THE COURT: Sustained.

23 Q. (By MS. CLEMENT) Can you tell us during that
24 two-day meeting if you met anyone from the senior
25 management team at corporate headquarters?

26 A. I would say we met everyone.

27 Q. All right. And what was the actual orientation that
28 you went through in those -- or, strike that.

1 What was the purpose to your understanding of that
2 two-day meeting?

3 A. I think there were a few purposes. One was for
4 Chris Hyatt in his new role to have a chance to bond with
5 his new team and for his team to bond together. It
6 certainly was an opportunity for us to review our
7 challenges and our business plans for the 2010 year and to
8 interact with all of the executives in each of the
9 functional areas in corporate, so we could hear from them
10 what they were going to do to support us in the field and
11 what issues they felt they needed us to work on.

12 Q. And how long was the conference, did the conference
13 last?

14 A. It was a two-day meeting.

15 Q. Okay. And what were the -- what -- how much time
16 were you expected to be in the conference?

17 A. The meetings started at 8:00 and we had meetings
18 through 6:00 o'clock. And every 30 to 45 minutes we would
19 have another speaker. So it was two very full days.

20 Q. Were there any evening events?

21 A. Yes.

22 Q. And what was the evening -- what were the evening
23 events?

24 A. Um, well, the first night that we all flew in, we
25 had just a casual dinner with Chris at a local restaurant.
26 The second night we had a more formal dinner with the
27 executive team, from -- the two CEOs and their entire
28 staff. And then the third evening, Chris Hyatt had

1 arranged for kind of a bonding trip for us to an Indian
2 gaming casino, where we were treated to being picked up in
3 a stretch limo and driven to have fun.

4 Q. And in those -- the actual conference time between
5 8:00 and 6:00, was -- would -- did you meet Dan Baty?

6 A. Yes.

7 Q. And was this the first time you'd met Mr. Baty?

8 A. Yes.

9 Q. And tell the jurors, who is Dan Baty?

10 A. Dan Baty is -- well, at the time -- I'm not sure if
11 he still is -- a co-CEO and founder of Emeritus
12 Corporation.

13 Q. And how did you meet Mr. Baty?

14 A. Dan, as well as Granger Cobb -- both came in
15 independently, separately to the meeting, to address all of
16 us, to welcome us to the two-day meeting, to share their
17 thoughts and their expectations for the following year.

18 Q. And can you describe for the jury if you had a
19 particular introduction with Mr. Baty.

20 A. Yes.

21 Q. And can you tell the jury what that introduction
22 was.

23 MS. BADAWIYA: It calls for hearsay, your Honor.

24 THE COURT: I need some more foundation.

25 MS. CLEMENT: Okay.

26 Q. (By MS. CLEMENT) How did you meet Mr. Baty? What
27 was going on?

28 A. Dan came in to welcome us and he just came in -- it

1 wasn't a scheduled time. He just came in unannounced. And
2 Chris Hyatt welcomed him to the room and asked him to sit
3 at the front of the table and proceeded to introduce each
4 of us that Dan had not yet already met. There were only
5 two of us actually. To Dan and Dan to us.

6 Q. And did Mr. Baty have something to say to you when
7 he was introduced to you?

8 MS. BADAWIYA: It calls for hearsay.

9 MS. CLEMENT: Well, let me lay --

10 THE COURT: I mean, "It's a nice day." "The
11 weather's cold." I mean, I need some relevance here.

12 MS. CLEMENT: Oh, okay. I'll rephrase. Thank you,
13 your Honor.

14 Q. (By MS. CLEMENT) Was -- were you introduced to
15 Mr. Dan Baty as the new Vice President of Operations for
16 California?

17 A. Yes. Chris introduced me as not only the newest
18 member of the team but the only Vice President of
19 Operations who had ever been hired from the outside.

20 Q. And what was Mr. Baty's response to that particular
21 introduction?

22 MS. BADAWIYA: That calls for hearsay.

23 THE COURT: She can respond.

24 THE WITNESS: He turned to me and with a big smile
25 on his face said, "Aah, so you're the one who's going to
26 run the shit hole."

27 (Laughter.)

28 Q. (By MS. CLEMENT) And when Mr. Granger Cobb came

1 into the meeting at a separate time, did he lay forth what
2 he thought the priorities were for Emeritus for 2010?

3 A. Yes.

4 Q. And what was -- were his priorities for 2010?

5 MS. BADAWIYA: Your Honor, I'm just going to -- for
6 2010, I'm going to assert that it's irrelevant. And it's
7 352.

8 THE COURT: What would be the relevance, please,
9 Miss Clement?

10 MS. CLEMENT: It's still going to the same issue,
11 your Honor, in this case, about DEBITED and the focus of
12 the company.

13 THE COURT: All right. Limited questions in this
14 area.

15 MS. CLEMENT: Okay.

16 Q. (By MS. CLEMENT) Can you tell the jurors what
17 Mr. Granger Cobb's priorities were with regard to -- from
18 his perspective as the co-CEO for 2010.

19 A. There were several. But acquisitions of additional
20 properties, additional portfolios of communities was one
21 major area that we discussed and how we would integrate
22 those into our existing operations. And, of course, one of
23 the largest, it's a public company --

24 MS. BADAWIYA: Your Honor, this is 352. It's
25 irrelevant.

26 THE COURT: I think she's still answering the same
27 question that I overruled your objection to. And I don't
28 know what she's going to say next.

1 Do you have a specific idea of what she's going to
2 say?

3 MS. BADAWIYA: I do. Can we approach?

4 THE COURT: Come up.

5 (Whereupon an unreported bench conference was then
6 had in open court between the Court and counsel.)

7 THE COURT: Based on this discussion at sidebar, the
8 objection is overruled.

9 THE WITNESS: So Granger discussed with us the plans
10 for additional acquisitions. And he talked with us
11 specifically, and as one would imagine a CEO would do,
12 about our need to improve our operations and in what
13 categories one would need to improve our operations in
14 order to improve the bottom line, or the DEBITED.

15 So there was a lot of focus on growing revenue
16 through occupancy and through rate, and reducing cost, both
17 direct variable cost in the communities as well as overhead
18 costs, especially Workers' Comp.

19 Q. (By MS. CLEMENT) And can you tell the jurors, what
20 does DEBITED means?

21 A. Yes. DEBITED is a term that's very common to
22 Wall Street and analysts that follow this industry. It's
23 basically our measure of success, specifically to the
24 investors. It's earnings before interest, taxes,
25 depreciation, amortization, rent, and management fees.
26 It's basically the controllable revenue in the communities.

27 Q. And were you measured by DEBITED as the
28 Vice President of Operations by Emeritus?

1 A. Of course.

2 Q. And can you tell the jurors, what was your
3 compensation package based upon?

4 A. What were the components, or what was it based upon?

5 Q. Yes. What were the components of your compensation
6 package?

7 A. I had a base salary, a bonus plan. I had benefits
8 which included stock options and a deferred compensation
9 program for executives.

10 Q. And what was your base or gross salary?

11 A. 210,000.

12 Q. And how many stock options were you offered upon
13 your signing?

14 A. 10,000.

15 Q. And what was the bonus plan?

16 A. The bonus plan was targeted -- or I should say our
17 goals were set so that if we met them, we could achieve
18 about 30 percent of our base salary as a bonus. And if we
19 exceeded them, it could go up to as much as 36 percent of
20 our base salary.

21 Q. And what was that goal set by? What was the -- was
22 it DEBITED?

23 A. Yes.

24 Q. Did you have any measure of quality services as part
25 of your bonus structure?

26 A. No.

27 Q. Did you come back to Seattle again before you
28 started officially -- your official work date started?

1 A. No.

2 Q. What was the next thing that you did with the
3 company?

4 A. My first week on the job with Emeritus as the
5 Vice President of Operations, after attending the two-day
6 meeting, while I was still not an employee, was a full week
7 of orientation at corporate headquarters in Seattle.

8 Q. Okay. And can you tell us about that orientation.
9 What was the purpose of that week orientation at the
10 vice -- with the -- at Seattle corporate headquarters?

11 A. Well, as I mentioned earlier, they had never hired a
12 Vice President of Operations from the outside before. So
13 they wanted to make sure that I was oriented into all of
14 the corporate functions and to all of the department heads,
15 or really leaders, as well as the functional heads that I
16 would be working with and that would be supporting me in
17 the field.

18 So for five days, from 8:00 to 6:00, I had meetings.
19 Every 30 to 45 minutes, I sat in a conference room and --
20 there was a schedule, and every 30 to 45 minutes, someone
21 came in and said, "My turn," and sat me down with a stack
22 of reports and presentations and took me through their
23 function, whether it was finance, or sales, or marketing,
24 or accounting, IT, safety, HR, legal. So I was
25 indoctrinated into all of the different resources available
26 at the corporate level.

27 Q. Was there anything that struck you during that week
28 of orientation that was unique about Emeritus than any of

1 the other companies that you'd worked with or for?

2 A. Yes. Having really been raised in technology and
3 telecom industries, I was quite familiar with companies
4 that were very good at finance and IT. But my experience
5 in two prior -- and my only two prior assisted living or
6 senior living companies was that they were not particularly
7 good, nor did they have particularly good resources in IT
8 and finance. And I was struck by the volume of staff, as
9 well as the quality and the rigor of the policies,
10 procedures and infrastructure that was in place in this
11 company.

12 Q. In what departments?

13 A. I would say finance and accounting, legal, deals,
14 meaning the asset management group, the group that went out
15 and did deals and then managed the deals. But mostly I was
16 impressed by a group that they called -- I think it was
17 called revenue optimization or something. An entire floor
18 at the headquarters was a sea of desks and computers of
19 people whose sole job was to make sure that we pushed every
20 single sale in on a timely basis and that we reviewed every
21 existing resident to make sure that when they came up for
22 their annual date for an increase that the people in the
23 field didn't miss it. So they were very much the eyes and
24 ears for us in the field, to make sure that every dollar of
25 revenue was collected and was booked.

26 Q. After your first week on the job officially with
27 this orientation, what was your next thing that you did
28 with Emeritus?

1 A. The second week on the job, Chris Belford, who had
2 been the gentleman from the southwest division, my
3 counterpart who was overseeing California, set up for me to
4 accompany him down to Southern California to meet for two
5 days with all of my direct reports that were at the
6 divisional level and my direct reports that were at the
7 regional level. And then the third day was to visit
8 several of the communities that were in my Region Four.

9 Q. And can you tell us about the actual first two days
10 of that. Tell us what actually went on.

11 A. Mm-hmm. The first two days, as I mentioned, I was
12 meeting with all of the people that I was going to be
13 working with on a day-to-day basis. And many of them
14 reported to me either directly or through the CTM
15 collaboration. And their direction from Chris Belford was
16 to come prepared to introduce me to their department, to
17 introduce me to their functional area or to their community
18 and to let me know what the issues were, what the budget
19 looked like, what their results were from the previous
20 year, or this year to date, what their challenges were and
21 where they needed help.

22 Q. And during those first two days of meeting, what did
23 you learn were the top challenges for the California
24 division?

25 A. Unquestionably, staffing was the number one issue
26 that came up. And this was staffing at all levels. We
27 were really talking about the staffing at the divisional
28 level. That would be those directly reporting to me that

1 were for dining, or property, or for business, like
2 finance. Those jobs were all filled already. So I didn't
3 have any opening positions that reported directly to me as
4 functional heads. The problem was in the field. And the
5 regional directors of operations and their counterparts,
6 the regional directors of quality service and the regional
7 directors of sales, when they came in and talked, they
8 spoke specifically about the challenges in each one of
9 their communities. And the divisional people, who I had
10 met with on Monday, the day before, they spoke primarily
11 about how either we had a significant number of vacancies
12 or we had people in the jobs that were not qualified or not
13 properly trained.

14 So over the next two days we put, for lack of a
15 better word, I guess, a spreadsheet together of every one
16 of our communities -- we had 45 communities -- and all of
17 the key management positions in each one of those 45
18 communities. And as a group, I asked the divisional level
19 employees who reported to me, as well as the regional level
20 employees who managed the people literally in those
21 communities, to rate each job incumbent in every single
22 management position in every one of the 45 communities.

23 Because up until then, I just kept hearing, *We have*
24 *so many openings. We have so many of this. Nobody is*
25 *qualified. Blah, blah, blah.* So I said, *Okay. Let's --*
26 *let's -- I'm an accountant. Let's put it down on paper.*
27 *Here's 45 communities. Here's the five key positions at*
28 *every one of the 45 communities. Tell me if, first of all,*

1 *there's a vacancy. How many vacancies do we have in every*
2 *one of these positions?*

3 So we went through that. And I was floored. I
4 mean, this is a high turnover industry, but I had a
5 dramatic number of vacancies. And then we went through and
6 we looked at all of the executive directors, the ones who
7 were running the 45 communities. And if there was an
8 incumbent in that position, if it wasn't vacant, we -- as a
9 team, I asked them to please tell me -- *Is this an A*
10 *player? Is this person running a good community? Is this*
11 *a B player? Is this a C player who maybe needs help, maybe*
12 *they're new in their job, some training? Or is this a*
13 *person who should not be in this position?*

14 And so, again, I just wanted to, at a macro level,
15 get all this feedback from them and get a sense of the
16 challenges that were making California a challenged
17 community.

18 So vacant positions was a huge issue. Lack of
19 training and onboarding. When people came on board in a
20 management position, there was frequently no initial
21 training for them. And if there was any training, it was
22 directly from their regional manager, who had anywhere from
23 ten to fourteen other communities to manage. So they
24 didn't get a whole lot of onboarding and hand-holding. So
25 training was a big issue.

26 And labor management at the line level; the care
27 managers, not the department heads. But the care managers
28 was another big issue because there was a -- I don't

1 know -- an edict, a direction, a mandate from senior
2 management that started -- at least I heard it when I was
3 in corporate the first week, to reduce labor across the
4 board in the company ten percent at the -- at the community
5 level; that our labor numbers were out of whack.

6 So we were to look and reduce labor in all of our
7 communities. And so the department heads, specifically the
8 ones that were in charge of managing the communities, were
9 up in arms over that demand. Because their executive
10 directors were up in arms, and they were up in arms --

11 MS. BADAWIYA: Your Honor --

12 THE WITNESS: I'm sorry.

13 MS. BADAWIYA: -- it's turning into a narrative.

14 THE COURT: Break it down.

15 MS. CLEMENT: Actually, I couldn't even hear the
16 objection. I'm sorry.

17 THE COURT: It's narrative.

18 MS. CLEMENT: Oh, thank you. Thank you, your Honor.
19 Sure.

20 THE COURT: So if you could break these down,
21 please.

22 MS. CLEMENT: Absolutely.

23 Q. (By MS. CLEMENT) Did you first hear a directive
24 your first week at corporate, your first week on the job,
25 that there was a directive coming from the top of the
26 company to cut labor ten percent across the board, the
27 entire company?

28 A. I heard it from Chris Hyatt. That's where it

1 started, in meetings that I was with with Chris, and Chris
2 Belford, and with all of my peers. We had a conference
3 call while I was there the week of orientation and we
4 discussed how we were doing against the mandate to reduce
5 our labor cost by ten percent.

6 So Chris Belford was the one who introduced the
7 mandate to the California division prior to my being hired.
8 So that was the first I learned of it.

9 Q. And what's labor -- what's the biggest component of
10 labor in assisted living? Which staff members are the
11 biggest component of that?

12 MS. BADAWIYA: It's overbroad. It's --

13 THE COURT: I cannot hear you.

14 MS. BADAWIYA: It's overbroad. It's leading.

15 THE COURT: Overruled.

16 THE WITNESS: The largest number of hours in total
17 dollars is line staff, the staff in the communities that
18 take care of the residents.

19 Q. (By MS. CLEMENT) After -- oh. During that first
20 two days in your second week of the job, when you're in
21 Southern California, was there still a vacancy in the vice
22 president of sales and marketing?

23 A. Yes.

24 Q. And so did you have to pick up that position as
25 well?

26 A. Yes.

27 Q. All right. So after you've done this grading of
28 existing directors and regional people, that was -- and

1 everything you've told us about learning about these
2 problems in the California division, what did you do on the
3 third day?

4 A. I visited four to five communities in Region Four.

5 Q. And was it your impression after the first two days
6 in Southern California, where you met with all the regional
7 people and learned of all these problems, that you didn't
8 have a very deep bench to deal with in terms of filling
9 vacant positions and...

10 A. Yes. The people who were responsible for recruiting
11 were the same people that were trying to put their fingers
12 in the dike to hold onto things for the positions that were
13 already vacant. So they didn't have a lot of time to do
14 all of the work to generate candidate pools and then to
15 interview them and then to on-board them.

16 Q. Okay. So day three, what do you start doing on day
17 three in the second week of your job?

18 A. The CTM team from Region Four, which would have
19 included the regional director of operations, the regional
20 director of nursing, and the regional director of sales for
21 Region Four, accompanied me -- as well as the director of
22 dining and the director of property management, both whom
23 reported to me -- accompanied me to the four communities so
24 that I could get a sense of what the communities looked
25 like; I could get a sense of how the communities were
26 operating; I could meet the teams.

27 And one of the big objectives while in these
28 communities was to see and to, with my team, identify what

1 were the big investments we needed to make in these
2 communities. This would be the first four or five
3 communities of the 45 I would need to visit in order to
4 determine how I could direct the investment dollars for the
5 capital budget. So I was going into the communities to --

6 THE COURT: Hold on.

7 Q. (By MS. CLEMENT) Let me ask a follow-up question.
8 "Capital budget," what does that mean?

9 A. I'm sorry. I'm sorry.

10 MS. CLEMENT: Do you need some -- some water?

11 (Pause.)

12 THE WITNESS: I'm sorry. I'm an accountant. I
13 assume --

14 Q. (By MS. CLEMENT) Yeah. No. Assume nothing.

15 A. Um, there's a pool of dollars every year that the
16 company makes available to invest in improvements in each
17 one of our communities. Those are not dollars that have
18 anything to do with the profitability -- well, they have
19 something to -- they have very little to do with the
20 profitability, or that side of the business, but they're
21 dollars that we have to invest for a number of different
22 reasons.

23 The first and most important reason is safety. So
24 if there's something wrong, like the refrigerator isn't
25 working well, or there's holes in the floor, or the carpet
26 is getting all rumpled up and it's a trip hazard, those are
27 the first things that we need to make sure that we direct
28 dollars to. And then after that, we'll look at repairing

1 things or replacing things that are just getting old,
2 whether it's equipment, furniture, painting, carpet. And
3 then the last thing is if you have any money left over, you
4 know, where -- what can we do to pretty the place up.

5 Q. Okay. So why were you, in November of 2009, looking
6 at these facilities with capital budget in mind?

7 A. The capital --

8 MS. BADAWIYA: It's irrelevant. Your Honor, it's
9 irrelevant. 352.

10 THE COURT: What is the relevance, please?

11 MS. CLEMENT: Your Honor, it goes to this witness'
12 job responsibilities and what the money was being used for
13 versus resident care.

14 THE COURT: Okay. Go ahead.

15 THE WITNESS: I'm sorry. Could you repeat the
16 question.

17 Q. (By MS. CLEMENT) Sure.

18 What were you -- why were you, in November of 2009,
19 looking at capital expenditures for the facilities that you
20 were visiting, or communities?

21 A. I was a little late to the process. The capital
22 budget starts, where you can start spending the money, on
23 January 1st. And so we were already in December and we
24 didn't yet have our budgets locked down. So it was my job
25 as the Vice President of Operations to tell my boss, by
26 community, how I wanted to spend the money that he had
27 allocated to the California division.

28 So when I was visiting the communities, one of the

1 first things that I was looking for was to determine where
2 I needed to spend money.

3 Q. Okay. And during your tour, did you have any
4 serious concerns in any of the buildings that you visited?

5 MS. BADAWIYA: Your Honor, it's irrelevant.

6 THE COURT: We're going a little bit beyond here
7 now, Miss Clement. Let's focus it in, please.

8 MS. CLEMENT: Okay. Yes. Certainly.

9 THE COURT: The objection is sustained.

10 Q. (By MS. CLEMENT) Did you visit a building by the
11 name of Grand Terrace?

12 A. Yes.

13 Q. And when you visited that building, Grand Terrace,
14 did you have any serious concerns about the safety or -- of
15 the residents in that building?

16 MS. BADAWIYA: Your Honor, it's irrelevant.

17 Can we approach?

18 THE COURT: Yes.

19 (Whereupon an unreported bench conference was then
20 had in open court between the Court and counsel.)

21 THE COURT: The objection is sustained.

22 Q. (By MS. CLEMENT) I'm going to move forward to a
23 meeting that you learned about with regard to the
24 Department of Social Services. Okay?

25 Did you first learn in January of 2010 that the
26 Department of Social Services, the head of the department
27 for Southern California, was calling a meeting with
28 Emeritus senior management with regard to Emeritus'

1 operations?

2 MS. BADAWIYA: That, I believe, misstates the
3 record. It assumes facts, and it lacks foundation.

4 THE COURT: Ladies and gentlemen, would you please
5 step outside the courtroom doors for a moment.

6 **(The following proceedings were then had in open**
7 **court, outside the presence of the jury.)**

8 THE WITNESS: Do I need to go?

9 THE COURT: Yeah. I'm going to wait for them to
10 step out for a moment, then I'm going to ask you to step
11 down. And if you could seat yourself somewhere not
12 wherever they're standing, I'd appreciate it.

13 THE WITNESS: Okay.

14 (Susan Rotella exits the courtroom.)

15 THE COURT: All right. Be seated.

16 What is it about the question that you indicate
17 assumes facts or no foundation?

18 MS. BADAWIYA: Because of the way that the question
19 was asked.

20 THE COURT: What about the question?

21 MS. BADAWIYA: That it assumes that it was -- the
22 meeting was set up for the -- to discuss the operations of
23 Emeritus. There were a number of topics to discuss. And
24 that's my concern, how this meeting is being represented
25 and characterized. That would be my objection.

26 THE COURT: All right. We've already had a
27 discussion about the ability to lead the witness. And if,
28 in fact, there were multiple purposes for this meeting, I'm

1 going to assume you are going to be addressing that on your
2 cross/redirect of this witness.

3 MS. BADAWIYA: Right.

4 THE COURT: The Court has heard, the jury has heard
5 a little bit about this meeting in Southern California with
6 the Department of Social Services, but there hasn't been,
7 sort of, a full airing of everything that is related to it.

8 Miss Clement, if you could help me out here with
9 respect to -- where are you going with this witness? What
10 is the -- by way of an offer of proof, what is she going to
11 be testifying to?

12 MS. CLEMENT: She's going to be testifying about the
13 meeting on February 24th, 2010, lead up to it; the fact
14 that she requested -- or she was offered help from Melanie
15 Werdel about training and staffing problems that she was
16 having; that there was a pre-meeting before the meeting
17 with the Department of Social Services, what went down at
18 that meeting; what went down at the meeting with the
19 Department of Social Services. This was all discussed in
20 her deposition. And we've got some exhibits, 297 --

21 THE COURT: It doesn't help me if it's discussed in
22 her deposition.

23 MS. CLEMENT: I'm sorry, your Honor. I apologize.
24 And so that's it with regard to the Department of
25 Social Services' meeting.

26 THE COURT: Okay. So a pre-meeting. What was said
27 at the pre-meeting and what happened at the meeting --

28 MS. CLEMENT: Correct.

1 THE COURT: -- with the Department of
2 Social Services.

3 Now, how is this relevant to the case we are trying?

4 MS. CLEMENT: It's relevant to the case, your Honor,
5 because the issues that were discussed at the pre-meeting
6 with the Department of Social Services were with regard to
7 the ongoing concerns and problems that were -- she just
8 related, about understaffing, lack of training, lack of
9 orientation, people not knowing how to staff the facilities
10 based upon the budget that Emeritus had to get from them.
11 No staffing ratios.

12 THE COURT: Okay. And how does it relate to the
13 meeting itself with the Department of Social Services.

14 MS. CLEMENT: So they go from that meeting to the
15 meeting with the Department of Social Services. And what
16 the Department of Social Services tells them is that they
17 have concerns with regard to -- Emeritus has multiple
18 buildings that are in noncompliance. Now they're bringing
19 on more buildings, and they want to have an understanding
20 of how Emeritus is going to deal with these issues.

21 And at that meeting -- Melanie Werdel and Budgie
22 Amparo led the meeting from the Emeritus side, and they
23 never raised with the Department of Social Services the
24 fact that they knew at that point in time there were
25 serious problems with staffing and training and vacant
26 positions.

27 THE COURT: Are where we're going on this is there
28 was a pre-meeting where all these problems were allegedly

1 discussed --

2 MS. CLEMENT: Yes.

3 THE COURT: -- and then in front of the Department
4 of Social Services, no comments about that at all?

5 MS. CLEMENT: Correct. And --

6 THE COURT: And this is relevant to our case
7 regarding Mrs. Boice in that it relates to which element?

8 MS. CLEMENT: It relates to the issues of malice,
9 fraud, and oppression, and the knowing, continuing
10 admission of residents to the California division, despite
11 the notice that they continued to be understaffed and did
12 nothing about it.

13 THE COURT: Now --

14 MS. CLEMENT: But cut more staff.

15 THE COURT: -- is any of this alleged conversation
16 or issues related to the period of time when Mrs. Boice was
17 in residence at Emerald Hills?

18 MS. CLEMENT: I believe the noncompliance -- these
19 facilities went into noncompliance in 2009 and early 2010,
20 your Honor. So, no.

21 THE COURT: So we're talking about a period of time
22 post Mrs. Boice, where, arguably, if what you are saying is
23 accurate from this witness, that there was, what,
24 ratification? Ongoing whatever?

25 MS. CLEMENT: Yes. Ratification of the ongoing
26 issue of lack of staffing and training in California.

27 THE COURT: Okay. Now, Miss Badawiya, where are you
28 going on this?

1 MS. BADAWIYA: Well, first of all --

2 MS. CLEMENT: I'm sorry, your Honor.

3 MS. BADAWIYA: The --

4 MS. CLEMENT: I didn't -- it's not just
5 ratification. It's the corporate malfeasance. This is the
6 continual pattern by the corporate senior management to
7 direct and understaff their facilities and hide that from
8 the Department of Social Services when they're being
9 directly asked about their operations.

10 Thank you.

11 THE COURT: Miss Badawiya.

12 MS. BADAWIYA: Well, the person who would be
13 testifying for the Department of Social Services about what
14 the meeting was about is not sitting in that chair, to
15 start with.

16 And my objection to -- in the deposition and here
17 today -- is this characterization that it was a
18 pre-meeting. It wasn't a pre-meeting. In fact, even
19 Miss Rotella in her deposition says there was a separating
20 meeting. And it has no relevancy, your Honor, to
21 Miss Boice. It doesn't -- nowhere in -- Mr. Taylor sent a
22 letter talking about the topics that he was going to
23 discuss. And, of course, Miss Clement does not want to
24 mark this as an exhibit. It was attached to Miss Rotella's
25 deposition.

26 THE COURT: Okay. We're flying in about 15
27 different directions here. I am focusing on the substance
28 of the testimony.

1 She was at the meeting?

2 MS. BADAWIYA: She was at the meeting.

3 THE COURT: Okay. So then her presence -- her
4 personal presence is enough for her to describe what she
5 heard, what she saw, what she understood. I'm trying to
6 figure out here now whether or not it remains relevant to
7 corporate malfeasance or not, given this time frame.
8 That's what we need to be focusing on here, Mrs. Boice and
9 the relevant time frame for the litigation that we
10 currently have in front of us.

11 Now, you're telling me it's not.

12 MS. BADAWIYA: I don't believe it is.

13 THE COURT: Why?

14 MS. BADAWIYA: Because, first of all, in this
15 meeting that the Department of Social Services started,
16 there was no discussion about -- there was nothing in the
17 agenda talking about noncompliance and talking about
18 facilities that were noncompliant or what they were
19 noncompliant for.

20 THE COURT: And how do I know that? And how do you
21 know that?

22 MS. BADAWIYA: Based on the meeting itself.

23 THE COURT: Based on some witness that you have who
24 is going to testify about it, correct?

25 MS. BADAWIYA: That's correct.

26 And the documentation, your Honor, at the time,
27 frankly -- Miss Rotella's deposition, she -- it's not -- it
28 doesn't talk about staffing. In fact -- I mean,

1 Miss Clement's position is this talks about understaffing
2 and not having enough staff. And Miss Rotella testified in
3 her deposition that when they had the meeting in the
4 morning, with all of the new -- the new executive
5 directors, they were talking about onboarding, and they
6 were talking about training, and they used that opportunity
7 that morning to discuss those topics before they met with
8 the Department of Social Services.

9 And she asks her. She says: Did you talk about
10 concerns with staffing --

11 THE COURT: All right. What you are raising for
12 me --

13 MS. BADAWIYA: Yeah.

14 THE COURT: -- is a disputed fact. What actually
15 took place at this pre-meeting, whether or not there were
16 discussions about staffing or understaffing, and whether or
17 not any of this had any relevance whatsoever to
18 Mrs. Boice's case.

19 I don't resolve disputed facts. If there is any
20 tendency -- and I have yet to hear these questions and
21 specifically what the answer is going to be on that. You
22 want me to rule in advance.

23 MS. BADAWIYA: You know what, your Honor, I don't.
24 It's just the time frame is not relevant to Mrs. Boice's
25 claims in this lawsuit.

26 THE COURT: Well, I have already dealt with that in
27 our pretrial motions, about a time frame and whether or not
28 it may or may not be relevant. And just saying it's not

1 relevant is not sufficient.

2 If there is a continuing -- "if" there is a
3 continuing practice or pattern of ratification,
4 acknowledgment, understanding that there is in fact --
5 "if" -- understaffing or problems in management or anything
6 else, it started before Mrs. Boice, it continued with
7 Mrs. Boice, and it continued after Mrs. Boice, then we are
8 talking about fraud; we are talking about malice; and we
9 are talking about some of the other elements of
10 ratification and validation that are the essential elements
11 of the claim.

12 If there is evidence relevant to the issues in the
13 case, then there is a basis for its introduction.

14 Now, I'm going to let this witness come back in.

15 Miss Clement, I want clear-cut questions to the
16 witness on the topics of relevance.

17 MS. CLEMENT: Yes, your Honor.

18 THE COURT: I don't want her just expounding all
19 over the place. Because if she does that, I'm going to
20 start to cut her off.

21 Miss Badawiya, I don't want unfounded objections
22 from you, such as, "It's leading." I have already ruled on
23 the issue of leading with respect to this witness.

24 All right?

25 Let's bring this witness in, and the jury.

26 THE COURT ATTENDANT: Yes.

27 MS. CLEMENT: I'm going to grab an exhibit binder
28 for the witness, your Honor.

1 THE COURT: All right.

2 MS. CLEMENT: And it's Exhibit 297.

3 (Susan Rotella enters the courtroom.)

4 MS. CLEMENT: Sorry. This binder, I thought we were
5 going to replace it.

6 **(The following proceedings were then had in open**
7 **court, in the presence of the jury.)**

8 Q. (By MS. CLEMENT) You can get in your seat. I'm
9 just getting the exhibit ready.

10 Yeah, you need your glasses.

11 THE COURT ATTENDANT: Come to order. Department 45
12 is once again in session.

13 You may be seated.

14 THE COURT: May we have a new question, please.

15 MS. CLEMENT: Yes, your Honor.

16 Q. (By MS. CLEMENT) I would ask the witness to turn to
17 Exhibit Number 297, which I've opened up there for you.

18 **(Joint Exhibit Number 297 was marked for**
19 **identification.)**

20 Q. (By MS. CLEMENT) Now, Exhibit 297, this contains
21 three documents -- separate documents.

22 Is that true, Miss Rotella?

23 A. Yes.

24 Q. And the first page of Exhibit 297 is an e-mail from
25 Budgie Amparo to yourself and Lisa Hulse, and CC'd on a
26 number of people, including your boss, Chris Hyatt, true?

27 A. Correct.

28 Q. And that's dated January 7, 2010?

1 A. Yes.

2 Q. Okay. And then the second page is an e-mail from
3 you, dated February 11, 2010, to the -- your western
4 division team, and Lisa Hulse, Audrey Withers, Melanie
5 Werdel, and Liberty Stansberry?

6 A. Yes.

7 Q. And this was regarding a meeting in Southern
8 California for February 24th, 2010?

9 A. Yes.

10 Q. And the third page of the document is an -- a
11 executive director orientation and training for February
12 24th, 2010. It looks like an agenda.

13 A. Yes.

14 Q. And did you prepare that document?

15 A. I did.

16 MS. CLEMENT: At this time, your Honor, plaintiffs
17 would seek to move into evidence Exhibit 297.

18 MS. BADAWIYA: No objection, your Honor.

19 THE COURT: All right. 297 is admitted.

20 **(Joint Exhibit Number 297 was received into**
21 **evidence.)**

22 MS. CLEMENT: Bring up page one.

23 Q. (By MS. CLEMENT) Okay. So was this -- did you
24 learn in early January of 2010 that the Department of
25 Social Services was calling this meeting in Southern
26 California?

27 A. I don't recall exactly when I learned, but it was in
28 January at some point.

1 Q. Okay. And did you get this e-mail from Budgie that
2 was marked with high importance?

3 A. Yes.

4 Q. And was it your understanding that Budgie was
5 conveying what Melanie Werdel had told him; that the
6 Department of Social Services was trying to be proactive
7 and would like to have a session with huge providers like
8 us to discuss trends, concerns, questions we might have
9 involving licensing requirements?

10 A. Yes, that's what he communicated in this e-mail.

11 Q. Okay. And then following that --

12 MS. CLEMENT: Okay. You can turn on the lights, if
13 you don't mind.

14 Thank you, sir.

15 Q. (By MS. CLEMENT) Following that e-mail, did you
16 have some communication from Melanie Werdel related to the
17 Department of Social Services and your position as the
18 Vice President of Operations?

19 A. Yes.

20 Q. And did Ms. Werdel talk to you about support she
21 could provide you for the west division in your position?

22 A. Yes. Both she and Liberty Stansberry are head of
23 HR, asked if we could potentially utilize the opportunity
24 that we would have to all be together in Southern
25 California to discuss ways that Melanie and Liberty's
26 organizations could assist the California division and
27 specifically the executive directors.

28 Q. Okay. And Liberty Stansberry, was it your

1 understanding that she was the head of human resources for
2 all of Emeritus?

3 A. Yes.

4 Q. And Melanie Werdel, we know, was the Executive Vice
5 President of Administration for all of Emeritus.

6 A. Yes.

7 Q. Okay. And when you got that call from Ms. Werdel,
8 did you tell her, yes, you did want some help?

9 A. Absolutely.

10 Q. And what help did you tell her that you needed to
11 have?

12 A. Well, first, I started by saying how happy I was and
13 grateful for all of the work Liberty and her team, under
14 Melanie's leadership, had given us in recruiting.

15 So we had been aggressively working to recruit, to
16 build that candidate pool and to actually do screening
17 interviews. And instead of having the people in the
18 communities have to sort through all those resumes that
19 come in when you on-line apply, Liberty was able to
20 dedicate resources to do that for us in HR.

21 So I felt that we had some good progress going and
22 momentum on recruiting, but the area that we were
23 struggling with, now that we would get good people on
24 board, was to train them.

25 Q. Did you talk at all with Miss Werdel about concerns
26 that had been brought to your attention at this time about
27 staffing?

28 A. She asked me what were the issues that would be most

1 relevant to include in a discussion around executive
2 director orientation. And, yes, I talked at great length
3 about the challenges that I heard from the teams in the
4 field about labor management staffing.

5 Q. And explain to the jurors what you mean when you say
6 "labor management staffing."

7 A. Each executive director of each community is
8 responsible for determining how many care managers they
9 would -- and every department, but specifically the issue
10 was care managers, how many care managers they're
11 authorized to have hours for in a given week. And then a
12 given month, quarter, and a year.

13 So the challenge that I kept hearing from my team
14 was, *We have a budget. We know how much it says the*
15 *company wants us to not spend any more than, but we don't*
16 *know how on a week-by-week basis to actually figure out*
17 *what is appropriate staffing for the number of residents we*
18 *have and, more importantly, for the degree of care each*
19 *resident needed.*

20 Because every resident in assisted living and memory
21 care is very different. They all have different needs. So
22 just because you have ten residents doesn't mean you need
23 the same number of hours for each resident.

24 So that was the -- that was -- the challenge was to
25 understand how to effectively meet the company's objectives
26 for labor management, keeping the expenses in line, but at
27 the same time having the right number of hours of staffing
28 to make sure the residents were safe.

1 Q. So was the concern that you raised with Melanie
2 Werdel was that the people in the field don't feel like
3 they know how to staff within the Emeritus budgeted hours?

4 A. Yes.

5 Q. And was the concern that the people in the field
6 felt like they budgeted hours wasn't enough hours of
7 caregivers to meet the needs of the residents that they
8 had?

9 MS. BADAWIYA: That lacks foundation.

10 THE COURT: Overruled.

11 THE WITNESS: In general, I would say the majority,
12 yes.

13 Q. (By MS. CLEMENT) Now, your e-mail --

14 MS. CLEMENT: Which is the second page, Erik. If
15 you could put that up.

16 Thank you, Terrance.

17 Q. (By MS. CLEMENT) -- the February 11th e-mail, you
18 sent out to Melanie Werdel, everyone on your team, and you
19 let them know that you were going to have this orientation
20 meeting and, also, that there would be a meeting with the
21 Department of Social Services on February 24th, 2010, true?

22 A. Yes.

23 Q. Okay. And that prior to the meeting with the
24 Department of Social Services, there was going to be a
25 separate meeting with all of the western division RDOs, or
26 Regional Directors of Operations, except for one of them,
27 who was going to be kept in the field in case there was
28 emergencies.

1 Is that why you had them there?

2 A. Yes. Region One and Two are in Northern California,
3 and they were not invited to attend the DSS meeting. So
4 they were not planning to be in Southern California. But I
5 felt it was so important, this meeting that we were having,
6 to discuss the issues of ED onboarding, or orientation,
7 that I asked one of the Regional Directors of Operations to
8 come and represent for Northern California the issues that
9 they were hearing.

10 Q. Okay. And that was the RDO for Region One?

11 A. Correct.

12 Q. Okay. And then you let them know that Lisa Hulse,
13 yourself, and your Seattle and divisional resources team
14 was going to be there to discuss executive director
15 orientation and the onboarding process; is that right?

16 A. Yes.

17 Q. And I'm not going to show it all. But you also told
18 them they didn't have to prepare in advance, and you were
19 going to provide refreshments, etcetera.

20 True?

21 A. Yes.

22 MS. CLEMENT: Okay. Erik, could you go to the third
23 page, please.

24 Q. (By MS. CLEMENT) And so then did you prepare this
25 orientation for the training?

26 A. I did.

27 Q. Okay. Are these your handwritten notes off on the
28 side?

1 A. Yes, they are.

2 Q. Okay. And did you prepare this agenda before the
3 actual meeting itself?

4 A. Yes.

5 Q. Okay. And so were there people who attended whose
6 names were not printed on here?

7 A. Yes.

8 Q. And did those people include Budgie Amparo?

9 A. Yes.

10 Q. Ana De La Cerda?

11 A. Yes.

12 Q. And was it your understanding that Ana De La Cerda
13 was the Director of Policy and Compliance for all of
14 Emeritus corporate?

15 A. Yes.

16 MS. CLEMENT: Okay. And then let's go down to the
17 agenda.

18 Q. (By MS. CLEMENT) And did you lead the meeting?

19 A. I would say I kicked off the meeting.

20 Q. Okay. And this was the pre-meeting that was held
21 right before the meeting with the Department of Social
22 Services and the Southern California team, as well as the
23 senior executives, true?

24 A. Correct.

25 Q. Okay. And the Western Division Current Staffing
26 Situation Overview, did you kickoff or lead that aspect of
27 the meeting?

28 A. I did. I believe I introduced Audrey Withers, who

1 was the director of HR, who reported to me and I think
2 dotted line to Liberty Stansberry in corporate. And
3 Audrey -- the reason I actually had Audrey on there was
4 because Audrey produced for me, at my request, every week
5 an update on all of the open positions that we had across
6 the division.

7 Q. Okay. And was the number one issue raised in this
8 meeting, How do we at Emeritus staff to the appropriate
9 level for both the occupancy, number of residents, and the
10 acuity of the residents in the facilities?

11 A. Yes. Yes. They, again, did not quite understand --
12 many of the -- am I allowed to --

13 Q. No.

14 A. No. I'm sorry.

15 Q. Just stick -- you got to stick to the -- because
16 we're trying to get you out of here, so you got to stick to
17 the questions here.

18 A. Got it. I'm sorry. Could you --

19 Q. Yes. That's okay.

20 Was the -- was there an opportunity given by you for
21 the executive directors to speak openly about the concerns
22 that they had in the facilities?

23 A. Absolutely. I invited them. And I specifically
24 stated to them, both when I invited them and selected them
25 to attend this meeting -- I selected specific executive
26 directors to come, recently hired ones. And I specifically
27 told them -- I gave them my commitment that this was a
28 meeting where they needed to be open and honest and that

1 corporate was here to help.

2 Q. Did you tell them it was a safe environment?

3 A. Yes. Absolutely.

4 Q. And did you hear from the executive directors in
5 that meeting that they did not know how to staff with the
6 budget that they had to meet the acuity of the residents in
7 their facilities because there were no staffing ratios or
8 any guidelines by Emeritus?

9 A. Yes. That was the number one issue that was raised.

10 Q. And did you share that -- as the Vice President of
11 Operations, did you volunteer at the meeting that you, too,
12 had that concern?

13 A. I did.

14 Q. And what was the response from Seattle corporate to
15 you responding that you, too, had that concern about how do
16 we staff to meet the acuity of the residents?

17 MS. BADAWIYA: It's compound. It calls for hearsay.

18 THE COURT: It is compound.

19 MS. BADAWIYA: It's vague.

20 THE COURT: Seattle corporate is --

21 MS. CLEMENT: Okay. I'll rephrase.

22 Q. (By MS. CLEMENT) Did someone from the corporate
23 headquarters respond to that concern that you and the other
24 people at the meeting had, there was -- they did not know
25 how to staff to the acuity with the budget that Emeritus
26 gave them?

27 A. Yes. There were concerns and pushback about some of
28 the requests from the executive directors around staffing,

1 training.

2 Q. Did Budgie Amparo relate to the group what his
3 position was on staffing ratios on behalf of Emeritus?

4 A. Yes.

5 Q. Tell the jurors what Budgie Amparo said at that
6 meeting.

7 A. He stood up and he was, um, quite agitated. And he
8 said, *We will never have staffing ratios at Emeritus. I*
9 *worked in other organizations such as skilled nursing where*
10 *specific staffing ratios were mandated, and we will never*
11 *have them in assisted living and in Emeritus.*

12 And when asked why, he responded that if we have
13 specific ratios and formulas and a resident episode occurs,
14 and it was learned through the investigation that we didn't
15 have the right staff in place, we could be sued.

16 Q. What happened at the meeting after Mr. Amparo made
17 that statement, or directive?

18 A. It -- it quieted the conversation. We didn't really
19 go further on that topic.

20 Q. At that meeting, in addition to the concerns about
21 staffing in the facilities, was it also raised that there
22 was concerns amongst the executive directors and the
23 regional team, as well as yourself, about training of the
24 existing staff that there were in the facilities?

25 A. Yes. Many of the people in the communities, whether
26 they were department heads or whether they were line staff,
27 came on board and their training was really all on-the-job
28 training. And, again, since we were always so short of

1 staff, it's hard to take time to do training, even if you
2 have the right people on the staff to do it, if you're
3 always trying to fill in for open positions.

4 So, yes, the training -- the desire and need for
5 training was from the line staff all the way up to the
6 regional staff.

7 Q. And that was raised during the meeting prior --
8 immediately prior to going into the meeting with the
9 Department of Social Services?

10 A. You know, I don't remember that specifically. What
11 I remember specifically is the discussion about labor
12 management and the lack of staffing ratios, and the lack of
13 formulas, as many of us in that room had all come from
14 different companies that had those ratios. So that's how
15 we knew how to operate. And in the absence of it, we were
16 just trying to understand, *How do we know without a ratio*
17 *or a formula? Especially, how does the line staff*
18 *supervisor know how to appropriately staff the number of*
19 *hours of care staff on a daily basis?*

20 Q. And from that meeting, did you and the senior
21 management go from that meeting to the meeting with the
22 senior management from the Department of Social Services
23 for Southern California?

24 A. Yes. After a break for lunch, we then had the
25 meeting with DSS, Department of Social Services.

26 Q. And in that meeting with the Department of Social
27 Services, did Myron Taylor from the Department of Social
28 Services indicate that he was concerned that Emeritus was

1 getting larger and that there were multiple buildings that
2 Emeritus had in operation now that were in noncompliance
3 status with the State?

4 MS. BADAWIYA: That's irrelevant, your Honor.

5 THE COURT: She can answer.

6 THE WITNESS: Yes. The Department of Social
7 Services learned that Emeritus was in the process of
8 negotiating to take over operations for all of the Sunwest
9 communities which was going bankrupt. There were about a
10 148 communities --

11 THE COURT: Counsel approach, please.

12 MS. CLEMENT: Yeah. I'm sorry.

13 You just need to answer the question.

14 THE WITNESS: Oh, I'm sorry.

15 MS. CLEMENT: Yeah. Just the "Yes." Sorry.

16 (Whereupon an unreported bench conference was then
17 had in open court between the Court and counsel.)

18 MS. CLEMENT: Thanks, Judge. Sorry.

19 THE WITNESS: Sorry.

20 THE COURT: Okay. Ladies and gentlemen, we've gone
21 down a road here with some information that's not relevant
22 to this case. So I'm going to strike the last question and
23 the last answer.

24 Miss Clement.

25 MS. CLEMENT: Yes.

26 Q. (By MS. CLEMENT) At the meeting with Mr. Taylor and
27 the Department of Social Services team, did Mr. Taylor
28 indicate that there were concerns that Emeritus was getting

1 larger, while at the same time Emeritus had multiple
2 buildings that were in noncompliance status?

3 A. Yes.

4 Q. Did Budgie Amparo or Melanie Werdel, or anyone from
5 corporate, volunteer to the Department of Social Services
6 the concerns that had just been raised in the meeting you
7 just left about staffing issues in Emeritus in the
8 California division?

9 A. No.

10 Q. Following that meeting, did you get a call from
11 Chris Hyatt, your boss?

12 A. Yes.

13 Q. Did he tell you that he'd heard at the meeting that
14 you were being a troublemaker?

15 A. It was the day after the -- excuse me. It was two
16 days after the DSS meeting when I returned to Northern
17 California, not the next day.

18 Q. Okay. Thanks for the clarification.

19 So when you returned to Northern California, did you
20 get a call from Chris Hyatt, your boss?

21 A. I did.

22 Q. Did he tell you that he heard you were being a
23 troublemaker?

24 A. Yes.

25 Q. And did he tell you why you were being a
26 troublemaker?

27 A. Yes.

28 Q. And what did he tell you?

1 A. He told me that I was not being an inspirational
2 leader, that I was riling up the troops, and that both
3 Budgie Amparo and Liberty Stansberry showed up on his
4 doorstep the morning following the meeting with DSS,
5 complaining that I was not acting appropriately in the
6 meeting.

7 Q. Did you ask him to explain?

8 A. I did.

9 Q. And did he have anything further to tell you as to
10 why you were being a troublemaker, according to Budgie and
11 Liberty?

12 A. Yes. It wasn't overly specific. It was that I was
13 not setting a good example by encouraging them to complain
14 about labor issues and -- and, also, to -- in his words --
15 encourage them that perhaps we needed staffing ratios or
16 formulas or some other way, that was not Emeritus' policy.

17 Q. Did you have weekly calls with your boss, Chris
18 Hyatt?

19 A. They were supposed to be weekly. They probably
20 happened 50 percent of the time.

21 Q. Okay. And in preparation for these calls, would you
22 prepare an agenda?

23 A. Yes.

24 Q. And if you'd look at Exhibit 298, is this an agenda
25 that you prepared for a phone conference with Chris Hyatt
26 on January 25th, 2010?

27 A. Yes.

28 **(Joint Exhibit Number 298 was marked for**

1 **identification.)**

2 MS. CLEMENT: At this time, your Honor, plaintiffs
3 will seek to move into evidence Exhibit 298.

4 MS. BADAWIYA: No objection.

5 THE COURT: 298's admitted.

6 **(Joint Exhibit Number 298 was received into**
7 **evidence.)**

8 MS. CLEMENT: Thank you, Terrance.

9 THE COURT ATTENDANT: You're welcome.

10 Q. (By MS. CLEMENT) I'm going to move down to this
11 February 8th visit.

12 Can you tell us, is this February 8th visit a visit
13 that Mr. Hyatt and Mr. Granger Cobb, the co-CEO, were going
14 to make to your division?

15 A. No. The February 8th week visit was a meeting -- a
16 visit that Chris Hyatt was going to make to visit several
17 of my communities with me.

18 Q. Okay. And you were asking Mr. Hyatt did he still
19 want to combine that week visit with the visit that
20 Mr. Granger Cobb was going to make in early -- in March.

21 Is that true?

22 A. I was asking him, since we already have a meeting
23 scheduled to be together visiting communities in March with
24 the co-CEO, did he still want to do the February 8th
25 visits, or should we just combine them both in March when
26 we met with Granger.

27 Q. From the first month you were on the job throughout
28 your tenure at Emeritus, did you continue to push back on

1 these directives to cut labor in the California division?

2 MS. BADAWIYA: It's argumentative. It lacks
3 foundation.

4 THE COURT: I'm sorry?

5 MS. BADAWIYA: It lacks foundation. It assumes
6 facts.

7 THE COURT: She can answer.

8 THE WITNESS: I wouldn't say I pushed back. I
9 continued to ask questions because I didn't understand.
10 And I thought if I, as an MBA and CPA, do not understand,
11 then how can possibly supervisors in the field understand
12 labor management. And I thought -- instead of pushing
13 back, I thought if I just asked my questions differently,
14 perhaps I would get through to Chris, my boss, what my real
15 concerns were. I thought I wasn't communicating in an
16 appropriate, articulate manner; that he didn't understand.

17 Q. Okay. And so in this agenda in January of 2010, did
18 you talk to Mr. Hyatt, did you tell him that you were still
19 concerned about staffing management and you needed to
20 better understand how Emeritus calculates staffing so you
21 could -- because you understood there's no "models" based
22 upon current and projected occupancy and acuity?

23 A. Yes. Under the February 8th --

24 MS. BADAWIYA: I'm sorry, your Honor. It's leading.

25 Your Honor, I'm sorry. I don't understand what the
26 question is.

27 THE COURT: It's a question. Did she communicate
28 that.

1 Go ahead.

2 THE WITNESS: I'm sorry. Could you repeat the
3 specific question.

4 Q. (By MS. CLEMENT) Yes. I'm looking up here on the
5 screen, Exhibit 298.

6 Did you communicate to Mr. Hyatt that you had
7 continued concerns about staffing management and you needed
8 to understand how Emeritus calculates staffing since it
9 didn't have any "model" based on current and projected
10 occupancy and resident acuity?

11 A. I did.

12 Q. And did you tell him that there was a lack of
13 understanding not only with you, but in the field, about
14 how to manage labor?

15 A. Yes.

16 Q. And is this something that you repeated with him
17 over and over and over during the course of your
18 employment?

19 A. I asked multiple times.

20 Q. Okay. Now, let's turn to Exhibit Number 300.

21 **(Joint Exhibit Number 300 was marked for**
22 **identification.)**

23 MS. CLEMENT: Terrance, could you get the lights for
24 us.

25 Thank you, sir.

26 Q. (By MS. CLEMENT) Okay. Are these two e-mails, one
27 that you received from Chris Hyatt and one that you -- in
28 reply to Mr. Hyatt, that's dated February 22nd, 2010?

1 A. Yes.

2 Q. And in this e-mail from Mr. Hyatt, was he telling
3 you how he was going to -- what he was going to use for
4 your budget for labor, for all of California for 2010?

5 A. Yes. He was sharing with each one of his direct
6 reports, divisional and vice presidents of operation, what
7 he recommended for the labor hours to be utilized in the
8 2010 budget. And included in that was my west division.

9 Q. Okay. And in response to him -- his e-mail to you,
10 you wrote back to him and told -- had a concern because of
11 the methodology he was using to use -- for -- to create
12 your labor budget for 2010, true?

13 A. Yes.

14 MS. CLEMENT: Okay. At this time, your Honor,
15 plaintiffs would seek to move into evidence Exhibit 300.

16 MS. BADAWIYA: No objection.

17 THE COURT: Three hundred is admitted.

18 **(Joint Exhibit Number 300 was received into**
19 **evidence.)**

20 MS. CLEMENT: Erik, can you put up the second page.

21 Whoop. We had it and we lost it. Okay.

22 Q. (By MS. CLEMENT) So this is the -- this is
23 Mr. Hyatt's e-mail. And the bottom line is telling you how
24 he's going to use your third quarter actual labor expenses
25 and make that for your 2010 budget; is that true?

26 A. That's what he's proposing.

27 Q. Okay. So he wasn't just going to use just that one
28 quarter. But he's saying we're going to use those actual

1 numbers and make it for each quarter in 2010, true?

2 A. Yes.

3 Q. Okay. And then let's go to your e-mail, please.

4 MS. CLEMENT: Erik.

5 Q. (By MS. CLEMENT) And did you question that in your
6 response and let Mr. Amparo know -- I mean -- strike that.
7 Excuse me.

8 Did you let Mr. Hyatt, your boss, know that the
9 third quarter or the fourth quarter significantly
10 understates your actual labor because you had a significant
11 number of vacancies, at least in management positions and
12 possibly in non-management staff in which to -- which you
13 were working to aggressively fill and, therefore, that
14 budget for labor would be way off?

15 A. Yes.

16 MS. CLEMENT: Thank you, Erik.

17 Thank you, Terrance, for the lights.

18 THE COURT: Is this a good time to break?

19 MS. CLEMENT: Yes, your Honor.

20 THE COURT: Ladies and gentlemen, leave your
21 notebooks on the chairs. Remember the admonitions. Let's
22 be back, ready to go, at 3:20.

23 We are in recess. Okay. We're in recess.

24 MS. CLEMENT: Thank you, Judge.

25 (Recess.)

26 (Change of court reporters.)

27 ---o0o---

28

1 **(The following proceedings were held in open court, in the**
2 **presence of the jury:)**

3 COURT ATTENDANT: Come to order. Department 45 is
4 once again in session. The honorable Judge Judy Hersher now
5 presiding. You may be seated.

6 Q (By MS. CLEMENT) Ms. Rotella, shortly after the --
7 being told by your boss that you were a trouble-maker, did
8 you then attend a three-day conference of all of the
9 divisional and regional teams in the United States in
10 Seattle headquarters?

11 A Yes.

12 Q And was the purpose of that, um, three-day conference
13 to do presentations, workshops, have break-outs, and there
14 were reward ceremonies as well?

15 A Yes.

16 Q And, um, at that ceremony, um, were -- were you called
17 out by Chris Hyatt and Liberty Stansberry to a meeting?

18 A I'm sorry, at the awards ceremony?

19 Q At the three-day conference in Seattle were you asked
20 to meet with Chris Hyatt and Liberty Stansberry?

21 A Yes. I had a meeting with them at the end of the
22 conference.

23 Q Okay. And can you tell the jurors what Mr. Hyatt and
24 Ms. Stansberry said to you at the end of that conference,
25 and -- and can you tell us when that was, the date of that
26 meeting?

27 A It was Thursday, I believe it was March 4th. And I
28 was told by Chris Hyatt, um, a number of things, but, in

1 essence, that I was not a fit with the corporate culture and
2 he asked me to resign.

3 Q And when he told you you were not a fit with the
4 corporate culture, did you ask him what that meant?

5 A Yes.

6 Q And what did he tell you?

7 A Well, he didn't really, um, have a good answer for it.
8 Um, he just continued to, um, tell me that, well, he was
9 concerned that I, um, had been sick at the conference and
10 that I, um, missed, um, an hour and a half of a presentation
11 and told me that I was, um, just not a fit and that it was
12 irreparable and I had lost the confidence of everyone in the
13 company and so he asked me to resign.

14 Q And did you say you would resign?

15 A No.

16 Q And is the reason you said you wouldn't resign is
17 because you had given them a two-year commitment and you
18 felt you had done nothing wrong?

19 A I didn't resign because I was shocked and I had no
20 idea why I was being fired and I didn't get a good answer
21 when I requested specific information from my boss and from
22 the VP of HR.

23 Q And did Mr. Hyatt say anything to you about, um, this
24 being a small industry, words to that effect?

25 A When he asked me to resign I said, I'm not sure why I
26 would resign. I -- I was so shocked. I -- I just asked,
27 Why would I resign? And he replied, This is a small
28 industry. You know a lot of people in it. You have a good

1 reputation, and I have never given anyone a bad reference
2 who has resigned.

3 Q And were you fired?

4 A I was.

5 Q And, um, were you told to leave the next day?

6 A Yes. I was still in Seattle, and I was told that, um,
7 the company would pay for my flight back home.

8 MS. CLEMENT: Your Honor, stipulation of Counsel we
9 will move into evidence Exhibit 5039.

10 MS. BADAWIYA: Yes, your Honor.

11 THE COURT: All right. 5039 is admitted.

12 **(Joint Exhibit 5039 was marked and admitted into evidence.)**

13 MS. CLEMENT: A couple of questions on this.

14 Terrance, could -- could you get the lights for us?

15 Erik, could you just shoot-out the picture real quick,
16 top of the page, so we can see what we are talking about?

17 Q (By MS. CLEMENT) Here is this -- the letter from
18 Myron Taylor, um, to Melanie Werdel at corporate
19 headquarters requesting a meeting with senior management
20 that we talked about, the February meeting?

21 A Yes, it is.

22 Q Okay. Shoot down now to the bottom part. Thank you.

23 And was it your understanding the purpose of the
24 meeting, based upon this Myron Taylor letter, five things,
25 trends in the industry, challenges and as they relate to
26 policies and regulations, clarification of resident care
27 responsibilities, including those in independent living,
28 observation of change conditions of residents and staff

1 responsibility, and update on the corporate status of
2 Emeritus?

3 A Yes. That was the, um, proposed agenda.

4 Q And did you have an understanding that items 3 and 4
5 on that agenda were in relation -- at least by the time you
6 got to the meeting that 3 and 4 were related to facilities
7 that had gone into non-compliance for these particular
8 issues?

9 MS. BADAWIYA: That lacks foundation.

10 THE COURT: She can answer.

11 THE WITNESS: Yes.

12 Q (By MS. CLEMENT) And number 4 was related to this,
13 um -- the growth of Emeritus as you understood it?

14 A No. Number 4 was --

15 Q Oh, excuse me. Number 5. I apologize.

16 A Yes, number 5.

17 Q Thank you for correcting me.

18 And, um, did the -- thanks for getting the lights. We
19 can take this off now.

20 Did the meeting go exactly down that agenda by
21 Mr. Taylor?

22 A No.

23 MS. CLEMENT: Thank you. No further questions.

24 MS. BADAWIYA: Good afternoon.

25 REDIRECT EXAMINATION

26 BY RIMA BADAWIYA, Attorney at Law, Counsel on behalf of the
27 Defendant:

28 Q Good afternoon, Ms. Rotella.

1 A Good afternoon.

2 Q Um, before we start, Ms. Ford -- your Honor, can I
3 display the last exhibit?

4 THE COURT: Sure.

5 Ms. Badawiya, you are going to need to speak up.

6 MR. REID: Okay. I will try to do that.

7 THE COURT: Thank you.

8 Q (By MR. REID) Ms. Rotella, while we were on the break
9 did you have an opportunity to talk to Ms. Clement about
10 this last exhibit?

11 A Yes.

12 Q And did she tell you, 3, 4 and 5, you should tell the
13 jury that that has to do with non-compliance?

14 A No.

15 Q She didn't suggest that to you?

16 A No.

17 Q You are under penalty of perjury, do you understand
18 that?

19 A I certainly do.

20 Q Okay. Thank you.

21 Now, we first met at your deposition on August 29th
22 last year. Do you recall that?

23 A I do.

24 Q Okay. And my understanding is you were employed by
25 Emeritus from November 30th of '09 to March 5th; is that
26 correct?

27 A That is correct.

28 Q Now, about three months into your employment with

1 Emeritus you just testified you were terminated, correct?

2 A Correct.

3 Q At the time of your deposition you were represented by
4 your own attorney, a Michael, um, Welch, correct?

5 A Yes.

6 Q Okay. And Mr. Welch is your attorney in your wrongful
7 termination lawsuit that you have against Emeritus, correct?

8 A He is.

9 Q This lawsuit against Emeritus was filed on June 18th,
10 2010; is that correct, ma'am?

11 A It would be in the general vicinity, yes.

12 Q Some time in 2010 you filed the lawsuit?

13 A Yes, I did.

14 Q And the lawsuit is currently ongoing; is that correct?

15 A Yes.

16 Q Okay. Do you have a trial date?

17 A I do not.

18 Q Fair to say that you are not friendly towards
19 Emeritus; would that be a fair statement?

20 A I guess in lawyerese that would be correct.

21 Q Okay. In any case, somebody that sues somebody else is
22 not friendly to that person, correct?

23 MS. CLEMENT: Argumentative, your Honor.

24 THE COURT: She can answer.

25 THE WITNESS: Yes.

26 Q (By MS. BADAWIYA) Now, prior to your deposition on
27 August 29th you had an opportunity to meet with Ms. Clement;
28 is that right?

1 A Um, excuse me, could you repeat the date again?

2 Q Sure. August 29th, that was the date of your
3 deposition, correct?

4 A Yes.

5 Q And I believe you testified at your deposition that
6 you met with Ms. Clement the day before your deposition. Do
7 you remember that?

8 A Yes, with my attorney.

9 Q Okay. Now, before we get into the meeting that you
10 had with Ms. Clement, I want to go back and discuss any
11 phone conversations that you might have had with
12 Ms. Clement. Do you have that in mind?

13 A Um, during which time period?

14 Q Prior to you meeting with her on August 29th of 2012.

15 A Okay.

16 Q Okay. I believe you testified in your deposition
17 that, um, that you, um -- strike that.

18 I believe you told me in your deposition that as
19 Ms. Clement was looking for people who were suing Emeritus
20 that she found you; is that correct?

21 A I believe so. She came to me through my attorney.

22 Q During your phone conversation, that is the initial
23 conversation you had with Ms. Clement when she located you
24 as a result of your wrongful termination lawsuit, um, did
25 she tell you about the case that she had against Emeritus?

26 A You know, I would have to refresh my recollection from
27 what I had deposed -- what I had in my deposition.

28 Q Okay. Well, let's do that.

1 A Okay.

2 MS. BADAWIYA: Page 74, lines 6 through 9.

3 MS. CLEMENT: Go ahead.

4 MS. BADAWIYA: Your Honor, can I approach the witness?

5 THE COURT: Yes.

6 You want her just to read it to herself, correct?

7 MS. BADAWIYA: Yes.

8 THE COURT: Okay.

9 MS. BADAWIYA: Go ahead.

10 That is all I wanted you to read.

11 THE WITNESS: I'm sorry.

12 Q (By MS. BADAWIYA) Does that refresh your

13 recollection?

14 A Um, yes, of what I said.

15 Q And during this conversation that you had with

16 Ms. Clement, did she tell you that the case she had against

17 Emeritus was -- involved allegations of elder abuse?

18 A Yes.

19 Q And did she tell you during that same phone

20 conversation that it involved one of the California Emeritus

21 communities?

22 A I believe so.

23 Q Isn't it true that during this conversation

24 Ms. Clement told you that she would probably be deposing the

25 same people that you would be deposing in your lawsuit?

26 A Um, yes.

27 Q Keeping in mind that you filed your lawsuit in June of

28 2010, can you estimate for the jury when is the first phone

1 call that you had -- phone conversation that you had with
2 Ms. Clement?

3 A Um, it may have been a year after I filed it. I
4 really couldn't...

5 Q After this phone conversation that you had with
6 Ms. Clement and before you met her, did you have any other
7 phone conversations with her?

8 A Before I met her?

9 Q Yes.

10 A Um, I -- um, you know, I don't -- I don't recall the
11 number of phone conversations or --

12 Q Was it more than one?

13 A It could have been.

14 Q Was it more than five?

15 A No.

16 Q So somewhere between one and five, correct?

17 A I would estimate, yes.

18 Q Okay. And besides phone conversations did you
19 exchange e-mails with Ms. Clement?

20 A Um, yes, via my attorney.

21 Q When you say via your attorney, you're saying that
22 your attorney was carbon copied on the e-mails; is that
23 correct?

24 A Um, yes. Sometimes he would, um, he would be the
25 intermediary, sometimes it would be directly to me.

26 Q Okay. So let's go back to the day before your
27 deposition when you had that meeting with Ms. Clement. Do
28 you recall that?

1 A I do.

2 Q Okay. And that meeting occurred at your home, right?

3 A It did, yes.

4 Q And your home at the time was in Sausalito?

5 A Mill Valley.

6 Q Mill Valley, okay. Is that in Marin County?

7 A Yes.

8 Q Okay. And Ms. Clement came to your home for that

9 meeting, correct?

10 A Yes.

11 Q And can you tell -- can you tell the jury how long

12 your meeting with Ms. Clement was that day?

13 MS. CLEMENT: Your Honor, may we please be heard at

14 sidebar?

15 THE COURT: Come on up.

16 MS. CLEMENT: Thank you.

17 (Sidebar conference was held.)

18 Q (By MS. BADAWIYA) Okay. Okay. I think I remember

19 where I was at. We were talking about how long, um, did you

20 meet with Ms. Clement that day. Was it an all-day meeting?

21 A Yes.

22 Q Okay. And -- and I believe you told us in deposition,

23 you told me that in that meeting was also your lawyer?

24 A Yes.

25 Q Okay. Um, can you tell us -- can you tell the jury

26 what Ms. Clement told you during that all-day meeting that

27 you had with her?

28 A Um, we talked about the deposition process. Um, we

1 talked about, um, the overview of the issues that, um, we
2 would be talking about, the areas that she wanted to know if
3 I had documents for or if I had specific information around,
4 um, to determine what was relevant. Um, there was a lot of
5 back and forth with my attorney just on things that might be
6 something that shouldn't be discussed because of my lawsuit.
7 So there was some discussion between, um, Ms. Clement and
8 Mr. Welch. Um, we had lunch. Um, there was a lot of
9 probably down time.

10 Q I believe that, um, during your deposition you told me
11 that at some point Mr. Welch went out to get lunch. Do you
12 remember that?

13 A I do.

14 Q Okay. And that during that time you were gathering up
15 the documents you had and trying to organize them?

16 A Uh-huh. That was part -- yes.

17 Q Okay. And isn't it true that the reason that the
18 meeting happened in your house was because, um, I think as
19 you put it, you didn't want to haul all of those documents
20 that you had down to Ms. Clement's office, correct?

21 A Um, I don't recall saying that. Um, certainly, I
22 guess, that would make sense. But I think also that I was
23 the center between where Mr. Welch lived and where
24 Ms. Clement was coming from. And I think they didn't also
25 want to inconvenience me any more than they needed to. But,
26 yes, I did have the documents in my home since I worked from
27 my home.

28 Q Okay. And at the time of your deposition I believe

1 you specifically told me that you didn't want to haul all of
2 that stuff anywhere. You don't recall that?

3 A I don't recall that, but I could imagine me saying
4 that.

5 Q Now, can you describe for the jury the type of
6 documents that you had in your home that belonged to
7 Emeritus or that you got from Emeritus?

8 A Uh-huh. I worked from home as a vice president of
9 operations. We didn't have an office so, um, the third
10 floor of my house was my office and, um, all of my binders
11 and reports and everything that I received, um, either in
12 the mail or, um, at meetings, etcetera, I had in my house in
13 my closet, um, where I filed all of my work product.

14 Q Okay. Now, all of the documents and binders that you
15 had, um, at home, you made those available to Ms. Clement
16 for her to review, correct?

17 A I believe I was subpoenaed.

18 MS. BADAWIYA: Okay. Um, that's not responsive to my
19 question. And I would ask that -- well, let me -- let me
20 rephrase this.

21 THE WITNESS: I didn't offer them up without a
22 request.

23 Q (By MS. BADAWIYA) Okay. Now, I believe in your
24 deposition you told me that there were some documents that
25 Ms. Clement took from you and that there were some documents
26 that you kept at home that she didn't want. Do you recall
27 that testimony?

28 A Yes.

1 Q And the documents that Mrs. Clement -- excuse me --
2 that Ms. Clement wanted from you, those documents we
3 attached -- we talked about in your deposition. Do you
4 recall that?

5 A I do.

6 Q Okay. Now, you testified about a mandate and a
7 directive that you received while at Emeritus to reduce
8 labor by ten percent. Do you recall that testimony?

9 A I do.

10 Q And isn't it true that you don't have any documents
11 that reflect a company mandate or directive to reduce labor
12 by ten percent?

13 A I actually don't know. I might.

14 Q Okay.

15 A I didn't search for one.

16 Q If you -- presumably if you had one document that said
17 that there was a ten percent -- that if you had a document
18 such as that, you would have given it to Ms. Clement,
19 wouldn't you?

20 A If I had gone through every single paper that I had in
21 my closet, on my computer and saw that, I would have given
22 it to Ms. Clement, but I did not review every single
23 document I had in my possession.

24 Q When -- when you were looking for documents that was
25 at Ms. Clement's request, she was telling you what kind of
26 documents she needed to help her case, correct?

27 A She told me the general categories of information that
28 she, um, was looking for. And I looked through my materials

1 to comply with the subpoena of -- of what it was that I was
2 asked to present.

3 Q And you would agree with me that a document reflecting
4 a mandate by Emeritus to cut its labor force by ten percent,
5 that would be a document that would have been helpful to
6 Ms. Clement's case, correct?

7 A If I had looked through every paper that I had and
8 found that, I absolutely would have presented it.

9 Q I understand that you live out of state; is that
10 correct?

11 A Yes.

12 Q You live in Oregon?

13 A I do.

14 Q Did you arrive in Sacramento last night?

15 A I did.

16 Q Okay. Did you have an opportunity to meet with
17 Clement -- Ms. Clement last night?

18 A I did.

19 Q Okay. And did you meet her at her office?

20 A Um, no. She picked me up at the hotel.

21 Q Which hotel are you staying at?

22 A Um, I was at the Embassy Suites.

23 Q And when she picked you up from the Embassy Suites she
24 took you back to her office?

25 A No.

26 Q Where did you go?

27 A We went to dinner.

28 Q Okay. Was anybody with you at dinner?

1 A No.

2 Q Okay. And did you -- what did you discuss at dinner
3 with Ms. Clement?

4 A Um, we discussed, in addition to social things, the
5 reason that I was here for was to testify. And, um, I had
6 never testified in a trial before and, um, I wasn't very
7 knowledgeable about the process or what really the focus for
8 me was going to be, um, since we had been deposed on so many
9 different things. So we talked a little bit about, um, the
10 process here, about the focus for me, timing, things like
11 that.

12 Q Prior to your meeting with Ms. Clement last night, did
13 you review your deposition?

14 A I got through about half of it.

15 Q Okay. It's pretty big, right?

16 A Yeah.

17 Q Okay. Um, did you discuss with Ms. Clement last night
18 aspects of your deposition?

19 A Um, no, not specifically. I actually had it with me,
20 but we didn't look at it.

21 Q Did Ms. Clement share with you any of the trial
22 testimony that has gone on so far in this case?

23 A Um, I know who, um -- people that I know and I had
24 worked with who have testified.

25 Q Did Ms. Clement share with you that Mr. Budgie Amparo
26 had testified in this trial?

27 A Yes.

28 Q Did she, during any of your meetings prior to today

1 and coming in, did she show you any video clips of
2 Mr. Amparo's testimony?

3 A Video clips, no.

4 Q Yes. Did she show you any of his testimony, written
5 testimony?

6 A Um, yes.

7 Q And did she do that last night?

8 A No.

9 Q When did she do that?

10 A I guess when she got the transcript.

11 Q Did she send you the transcript?

12 A Yes.

13 Q Do you recall how long ago that was?

14 A It was after -- some time after the court reporter
15 transcribed it. Um, I actually didn't really have much time
16 to read it or look at it. I was pretty busy at that time
17 selling and moving my house so, um, I don't recall the
18 specific date of when I received it.

19 Q Did you have an understanding that Mr. Amparo gave two
20 days worth of testimony in the trial?

21 MS. CLEMENT: Well, I object, your Honor. The
22 question assumes the witness was discussing trial testimony.
23 It was deposition testimony that the witness was discussing.

24 THE COURT: Well, I don't know what the witness was or
25 was not reading or discussing. So, um, if your objection is
26 it lacks foundation, rephrase, please.

27 MR. REID: I will be happy to rephrase. Perhaps I
28 misunderstood.

1 Q (By MS. BADAWIYA) So the -- what Counsel said,
2 you're -- strike that.

3 The testimony that you received from Mr. Amparo, was
4 that -- did you have an understanding as to whether it was
5 deposition testimony opposed to trial testimony?

6 A Um, no.

7 Q You don't -- as you sit here today you don't know what
8 it was?

9 A No, um, actually I don't, again, because I didn't
10 really spend that much time reading it.

11 Q Okay. Did you get it in the mail or did you get it
12 via e-mail?

13 A Um, I got it via e-mail along with my, um, attorney.

14 Q Besides Mr. Amparo's testimony, who else, um, did you
15 receive a deposition of?

16 A I can tell you who I didn't. I'm trying -- I don't
17 know everyone who has deposed or -- or who testified. Um, I
18 think I saw some of Melanie Werdel's. I think that was
19 about -- I think that might have been it.

20 Q So Melanie, Budgie. Did you get -- how about Lisa
21 Hulse?

22 A No, I didn't get her testimony. I may have heard some
23 parts of -- of it.

24 Q Anybody else that you recall, ma'am?

25 A No.

26 Q Besides deposition testimony, do you recall getting
27 anything else from Ms. Clement about this case?

28 A Um, I can't -- if you can be more specific about what

1 you're looking for I can answer if I got it or not.

2 Q Well, I'm not sure.

3 A Okay.

4 Q How about did you get any pictures of any of the
5 wounds, um, that are at issue in this case, pressure sores?

6 A No. I'm quite familiar with what pressure sores look
7 like.

8 Q Okay. So you didn't get any pictures of that?

9 A No.

10 Q Did you get any information from the Department of
11 Social Services?

12 A No.

13 Q I mean, Ms. Clement, did she send you anything from
14 the Department of Social Services?

15 A Um, anything Ms. Clement would have I -- I would have
16 already had.

17 Q When she sent you the testimony of Budgie and Melanie,
18 did she tell you why she was doing that?

19 A Um --

20 Q Remember, you are under oath.

21 A I'm -- I'm just trying to figure out if I will get
22 yelled at for, um --

23 THE COURT: I'm not yelling at anyone.

24 (Laughter)

25 THE WITNESS: I have an authority problem.

26 MS. BADAWIYA: We are moving in our seats in
27 anticipation.

28 THE WITNESS: Um, I think she was struck by how

1 untruthful they were.

2 Q (By MS. CLEMENT) Did -- in her e-mail did Ms. Clement
3 suggest to you or tell you that Budgie and Melanie were
4 being untruthful in their testimony?

5 A Did she tell me that they were being untruthful?

6 Q Yes.

7 A I think she told me she felt they were being
8 untruthful, yes. I believe, um -- yeah, I believe so. Yes.

9 Q Did she say they are from -- I believe, um -- if -- if
10 you can recall in the e-mail -- Mr. Amparo, he gave three
11 different depositions. Do you recall getting three volumes
12 of records?

13 A No.

14 Q Okay.

15 A Sorry.

16 Q That is okay. Of the deposition that you got with
17 Ms. Clement's comment, did she suggest to you that their
18 entire testimony was a lie or were there just aspects of it
19 that were not truthful?

20 A I don't think she parsed it out. I think she just
21 felt that they were not being truthful.

22 Q So you had dinner last night with Ms. Clement. How
23 long was your dinner?

24 A She picked me up at 6:30. I got back, um, about 9:15.

25 Q Did she treat you to dinner?

26 A Yes, we split it.

27 Q Between the time of your deposition on August 29th to
28 the present day, can you estimate for the jury how many

1 conversations, whether it's via e-mail, telephone or
2 otherwise, that you have had with Ms. Clement?

3 A Um, there were many in large measure because, um, I
4 did not believe I was going to have to testify because my
5 deposition had been taken and I was moving out of state.
6 Um, so there were a number of conversations, um, between --
7 among my attorney, Lesley and myself, um, discussing the
8 fact that there were aspects of my testimony that you
9 objected to and that I was unresponsive and so I was going
10 to have to testify.

11 So there were a whole lot of conversations about, do I
12 have to testify, do I not, when is it going to happen, how
13 far in the future is the trial going to be, did it get
14 pushed back, where am I in the pecking order. So there were
15 all of those kinds of, um, conversations.

16 Q So Ms. Clement told you the parts of your deposition
17 that the Defense had objections to; is that right?

18 A It wasn't the parts of it. I think what, um -- I have
19 a habit of talking a little long and so, um, I was
20 considered, some of my responses to be unresponsive, which I
21 take to be a legal term for not being direct with my answer.
22 So because of that, um, I believe you objected, um,
23 throughout my deposition so that it couldn't be used at
24 trial and so I would have to, um, attend in person.

25 Q Okay. So she told you you have to attend in person
26 because we were not going to be able to use your entire
27 deposition testimony at trial?

28 A Um, that's what I surmised from our conversation, yes.

1 Q Okay. During your conversations -- now, you said
2 "many conversations." Can you tell the jury what "many"
3 means? Does it mean more than 50, less than 50?

4 A I would say less than 50 but more than 25.

5 Q Okay. So somewhere between 25 and 50 conversations
6 with Ms. Clement over the last six months, correct?

7 A Yes, I would say so.

8 Q And during your conversations with her did she ever
9 e-mail you documents that had Emeritus -- the Emeritus logo
10 on it or documents you understood to be from Emeritus, and
11 did she ask you questions about those documents?

12 A I have no recollection of that.

13 Q After your deposition in August, um, up until today,
14 have you provided Ms. Clement with any other documents?

15 A Um, well, let me stop and think. No.

16 Q How did you get here this morning?

17 A Um, Ms. Clement's assistant drove me.

18 Q And is Ms. Clement's assistant out in the gallery
19 here? Do you see her?

20 A Um, no, he is not.

21 Q Is it a he?

22 A Yes.

23 Q Okay. Did you have a chance to speak to Ms. Clement
24 this morning?

25 A Yes.

26 Q How long did you speak to her this morning?

27 A Um, I was picked up at 7:45, eight o'clock -- wait, is
28 that right? Yeah. Sorry, we kept changing the time I was

1 going to get picked up. So I think he picked me up at 7:45
2 and then we, um, went to Ms. Clement's office and, um, I met
3 her team, um, who are going to be helping to shepherd me
4 through the process. And, um, we left separately at about,
5 um -- well, actually, she left. Um, I stayed in the office
6 for a couple of hours waiting for the phone call.

7 Q During any of your conversations with Ms. Clement
8 leading up to today did she suggest to you that you should
9 tell this jury that staffing concerns were directly related
10 to the budget?

11 A I'm sorry, could you repeat the question?

12 Q Sure. My question is you talked about staffing and
13 the ability to staff that was directly related to the
14 budget. Do you recall that testimony earlier?

15 A Yes. Staffing is the largest line item on the expense
16 side. So, yes, it's a key part of the budget.

17 Q Okay. The way that you presented your testimony to
18 the jury related to staffing, that's a little bit different
19 than what you testified to in deposition. Do you -- do you
20 recall that?

21 A I don't know if the questions were -- no. I don't
22 know if I, um, I answered differently or additionally. I
23 don't know if the questions that I responded to were the
24 same ones. Um, I -- I can only say that I answered
25 truthfully the question that was asked of me during
26 deposition and during trial.

27 If there is a specific question that you think I
28 wasn't consistent on, I would be happy to try to address it.

1 Q And I'll be happy to go through it with you.

2 A Okay.

3 Q Okay. Let's switch gears and talk about Mrs. Joan

4 Boice, okay?

5 A Yes.

6 Q Okay.

7 A Okay.

8 Q Did you know Mrs. Joan Boice?

9 A I did not.

10 Q Okay. Did you know her family?

11 A I did not.

12 Q Up to the present day it's fair to say you've never

13 spoken to any of the Boice family members?

14 A That is correct.

15 Q During your approximate three-month employment at

16 Emeritus -- and I will represent to you that Ms. Boice, if

17 you don't already know this, she was at Emeritus from

18 September 12th, 2008 through December 4th, 2008.

19 During that time frame you were not employed by

20 Emeritus; is that correct?

21 A That is correct.

22 Q Okay. And as of August 29th, 2012, you had never been

23 to Emerald Hills; is that correct?

24 A That's correct.

25 Q In the three months that you worked for Emeritus from

26 '09 to 2010, um, did you ever learn or hear about anything

27 related to the Boice residency at Emerald Hills?

28 A I knew that there was an issue with a case at Emerald

1 Hills. I did not know the name "Boice".

2 Q Okay. I believe you testified in your deposition that
3 you were aware of both Melanie Werdel and Janet McKenna, um,
4 while you were up in Seattle, that they were both looking
5 for documents related to the Boice case. Do you recall that
6 testimony?

7 A Um, to a resident case, yes.

8 Q To a resident case?

9 A I could not say that I remembered or even if I heard
10 what the name of the case was, but I knew it was Emerald
11 Hills.

12 Q Okay. And I believe you told me at that time your
13 impression was that both Ms. Werdel and Ms. McKenna
14 expressed frustration at not being able to find the
15 documents. Do you recall that testimony?

16 A Yes. They were quite frantic.

17 Q And it seemed like they were looking in earnest for
18 those documents. Do you recall telling me that?

19 A Yes. Uh-huh.

20 Q After your -- your termination did you reach out, for
21 instance, let's say, to the Department of Social Services
22 and make any complaints to them about Emeritus?

23 A I did not.

24 Q Okay. While you were employed with Emeritus did you
25 reach out to the Department of Social Services and make any
26 complaints about Emeritus?

27 A I did not.

28 Q Now, you've spoken about the meeting with Myron Taylor

1 who was a regional manager for the Department of Social
2 Services. Do you recall that testimony?

3 A I do.

4 Q When you were meeting Myron Taylor did you express any
5 complaints about Emeritus to Mr. Taylor during that meeting?

6 A I did not.

7 Q Now, going back to that meeting at the -- the February
8 24th meeting, so you're with me.

9 A Okay.

10 Q You had been with the company for approximately two
11 and a half months, correct?

12 A Yes.

13 Q Okay. And you had visited, based on your testimony
14 here today, a number of communities, correct?

15 A I did.

16 Q And you described earlier that you were, um, having
17 problems determining how, um, the acuity was factored into
18 the staffing. Do you -- do you recall that testimony?

19 A I do.

20 Q Okay. Did you express any of those concerns to
21 Mr. Taylor during your meeting with him?

22 A Absolutely not. I would have been fired on the spot.

23 Q Well, after your meeting -- after you were fired on
24 the spot you still didn't call Mr. Taylor to report those --
25 to report anything, did you?

26 A I never reported -- no, I did not. Um --

27 Q Now, you testified --

28 A -- could I -- I don't know if I have -- um, I think my

1 attorney sent a copy of my lawsuit to social services, but
2 I'm not exactly sure. I think he --

3 Q Your wrongful termination lawsuit?

4 A Yes. I think my attorney talked about doing that at
5 one point in time. I don't know if he ever got around to
6 doing it.

7 Q Okay. Presumably sending your wrongful termination
8 lawsuit to the Department of Social Services will help your
9 case; is that your understanding?

10 A I think it was because he planned to depose them.

11 Q Now, you testified that prior to coming to work for
12 Emeritus you had worked with Sunrise Senior Living. Do you
13 recall that testimony?

14 A Yes.

15 Q And Sunrise Senior Living does the same kind of thing
16 that Emeritus does, correct?

17 A They are in the same business.

18 Q Okay. And when you were employed with Sunrise you,
19 um -- or let me ask you this way: Do you understand what a
20 mandated reporter is?

21 A A mandated reporter, um, yes.

22 Q What's your understanding of what that means?

23 A If you see abuse happening you have to report it.

24 Q Now, you do not have, um, an RCFE administrator's
25 license; is that correct?

26 A That's correct.

27 Q Okay. Do you recall telling me in your deposition in
28 August that by the time you met with Mr. Myron Taylor in

1 February 2010 you did not believe that Emeritus had violated
2 any regulatory provisions in California?

3 A No. I would have to see that in my testimony.

4 MS. BADAWIYA: Okay. Counsel, page 224, lines 25
5 through 225, line 3.

6 MS. CLEMENT: Fine. Go ahead.

7 MS. BADAWIYA: I'm sorry. Line --

8 MS. CLEMENT: 224, 25.

9 MS. BADAWIYA: Through 9.

10 MS. CLEMENT: Yeah, I got that.

11 MS. BADAWIYA: Okay.

12 MS. CLEMENT: Thank you.

13 MS. BADAWIYA: I'm sorry, your Honor, can I approach?

14 THE COURT: Do you want to refresh her recollection?

15 MS. BADAWIYA: Yes, I do. I apologize, your Honor.

16 THE COURT: If you could just read that to yourself,
17 please.

18 THE WITNESS: Okay. Thank you.

19 MS. BADAWIYA: Just starting right here all the way
20 to --

21 THE WITNESS: Okay. By the time I met with
22 Mr. Taylor. Okay. Yes.

23 Q (By MS. BADAWIYA) And that refreshes your memory?

24 A Yeah.

25 Q Okay. And the answer to my question is that you, um,
26 you did not tell him during that meeting that you -- you
27 didn't have an impression during that meeting that Emeritus
28 had violated any Title 22 provisions, correct?

1 MS. CLEMENT: Misstates the testimony.

2 THE WITNESS: No, that was not what I would say.

3 MS. BADAWIYA: All right. Your Honor, may I read from
4 her deposition?

5 THE COURT: Go ahead.

6 MS. BADAWIYA: Okay. By the -- question: By the time
7 you met with Mr. Taylor in February of 2009, had you formed
8 any impressions that Emeritus had violated any regulatory
9 provisions in California?

10 Answer: No.

11 MS. CLEMENT: Well, your Honor, she needs to read the
12 clarification by the witness at line 7.

13 THE COURT: Line 7 on what page?

14 MS. CLEMENT: 225.

15 THE COURT: From line 3 to line 7?

16 MS. CLEMENT: She missed -- the witness had a
17 clarification question on line 7 of 225 that she failed to
18 read.

19 THE COURT: May I see the deposition, please?

20 MS. BADAWIYA: Certainly, your Honor. I'm sorry, I
21 thought that was all of the objections so...

22 THE COURT: You both want to approach, please?

23 (Sidebar conference was held.)

24 THE COURT: All right. Why don't you reread that
25 entire section, please?

26 MS. BADAWIYA: With the objections and everything,
27 your Honor, or --

28 THE COURT: Just the clarification.

1 MS. BADAWIYA: Okay. By the time you met with
2 Mr. Taylor in February of 2009, had you formed any
3 impressions that Emeritus had violated any regulatory
4 provisions in California?

5 The witness: Had violated?

6 Question: Yes.

7 Answer: No.

8 THE WITNESS: I don't disagree. There is a difference
9 between a violation of Title 22 --

10 MS. BADAWIYA: There are no questions pending.

11 THE WITNESS: Oh.

12 Q (By MS. BADAWIYA) Okay. I want to go back and talk
13 about that meeting, um, that you had with, um, the
14 Department of Social Services. Do you recall that?

15 A Okay.

16 Q Prior to that meeting you circulated an e-mail on
17 February 11th, 2010. Um, and I believe that e-mail has
18 already been marked and is entered into evidence. Exhibit
19 5039.

20 Your Honor, can we display that?

21 THE COURT: Exhibit 1539?

22 MS. BADAWIYA: Yes. Page 2 of that exhibit.
23 5039, your Honor.

24 THE COURT: 50?

25 MS. BADAWIYA: Yes. Five zero three nine. I
26 apologize.

27 THE COURT: Okay.

28 Q (By MS. BADAWIYA) Now, Ms. Rotella, this is an e-mail

1 that you authored, correct?

2 A Yes.

3 Q And you were sending it to, um, the western division,
4 all of your RDOs and RDQSs. Do you see that?

5 A Yes. The RDQSs didn't report to me, they reported to
6 Lisa Hulse.

7 Q Um, and in this e-mail you were talking about the fact
8 that you were going to have a meeting on February 24th with,
9 um -- starting here on paragraph 2. Prior to the meeting
10 with DSS we want to conduct a separate meeting from the 10
11 to 12 with all western division RDOs. Do you see that?

12 A I do.

13 Q Okay. Thank you.

14 And this was a meeting that you wanted to have with
15 all of your regional directors of operation and your new,
16 um, executive directors, correct?

17 A No. This was a meeting that Melanie Werdel suggested.

18 Q And she suggested the meeting, um, take place the same
19 time as this -- before the meeting with the Department of
20 Social Services because you were all going to be at one
21 location, correct?

22 A Correct.

23 Q Okay. And I believe earlier you were asked about this
24 meeting being a pre-meeting. It was actually a separate
25 meeting, separate and apart from your meeting with the
26 Department of Social Services, correct?

27 A Yes. Correct. I think it even says that.

28 Q Okay. It -- it -- the only commonality it had with

1 respect to your meeting with the Department of Social
2 Services was that it was just on the same day in the same
3 location because you were all there?

4 A That is correct.

5 Q Okay. Now, you write in here in the second paragraph,
6 The purpose of this meeting will be to discuss new executive
7 director orientation and on-boarding process. Do you see
8 that?

9 A I do.

10 Q Okay. And that was the only purpose you gave for this
11 meeting, correct?

12 A That's a pretty broad topic.

13 Q It sounds like what it mostly has to do with is
14 training, correct?

15 A Yes.

16 Q Okay. Can we turn on the lights? Thank you.

17 I believe in your deposition you also testified as you
18 did here today that, um, that the morning meeting with
19 Emeritus people, you facilitated that meeting, correct?

20 A Yes. They were primarily my direct reports, and I
21 kicked off the meeting.

22 Q Okay. You made the introductions?

23 A I did.

24 Q Do you recall testifying in your deposition that the
25 whole purpose of it was to have -- to be an open discussion,
26 to come up with a kind of action plan at the end of the
27 meeting for how we could make improvements in our meeting.
28 Do you recall that?

1 A How we could make improvements in our training.

2 Q Excuse me. In your training?

3 A Yes.

4 Q Now, you were asked about issues that the, um, EDs
5 raised during that meeting. Do you recall that testimony
6 earlier today?

7 A Excuse me, could you repeat that?

8 Q Okay. Do you recall testifying in your deposition
9 that there were two issues raised by the EDs during that
10 meeting. Do you remember that?

11 A Two significant ones before the meeting kind of shut
12 down.

13 Q Okay. And the first one was how Emeritus did
14 staffing, correct?

15 A How we managed staffing, yes.

16 Q Meaning the process that was used, correct?

17 A The process that was used to determine the appropriate
18 level of staffing at each level of community.

19 Q And the second issue that the EDs raised to you were,
20 um, that the EDs didn't understand how to read their
21 financial statements. Do you recall testifying about that?

22 A Yes. They were incredibly, um, complicated and
23 voluminous financial reports, um, that they were, um,
24 expected to digest and to report variances, explanations for
25 variances, and they had never actually been taught how to
26 read the reports or even how to respond in terms of what is
27 an appropriate explanation.

28 Q So isn't it true that one of the issues that was

1 discussed was how to understand a variance report, correct?

2 A Variance is one part of the financial reports that we
3 would cover in training.

4 Q In your deposition you talked about how, um, the
5 executive directors at this meeting, some had -- some of the
6 executive directors at this meeting that you had before you
7 met with the Department of Social Services, some of those
8 new executive directors had come from Sunrise communities.
9 Do you recall that?

10 A Yes. Sunrise had a very large presence in southern
11 California.

12 Q Okay. And so some of those executive directors, they
13 were looking for guidance on how Emeritus staffs its
14 communities, correct?

15 A Whether it was Sunrise or Alterra or, um -- there were
16 many different senior living communities represented by the
17 new executive directors, but the common thread in all of
18 them was that they were trained on how to develop staffing,
19 and they -- they were managed against those, um, ratios.

20 Q Okay. What I would like you to do is listen to my
21 question because if I'm not --

22 A Oh, okay.

23 Q -- asking the question, then I will rephrase the
24 question.

25 A I'm sorry. I thought I did.

26 Q Okay. No problem. Some of the folks that had come
27 from Sunrise, um -- Sunrise used staffing, um, formulas,
28 correct?

1 A Yes.

2 Q They used a staffing ladder to determine staffing,
3 correct?

4 A Of course.

5 Q Okay. And those new executive directors that had come
6 from Sunrise were use to that method of staffing, correct?

7 A The ones from Sunrise as well as the ones from other
8 senior living communities, yes.

9 Q Okay. They were use to staffing ratios, staffing
10 ladders, some sort of --

11 A They were use to a methodology of any kind which
12 directed them as to what the appropriate calculation of
13 staffing was for resident safety and for, um, adequate
14 coverage.

15 Q Okay. My notes are everywhere, so bear with me here.

16 Now, I believe you testified earlier about, um, Budgie
17 Amparo being in that meeting. Do you recall that?

18 A Yes. It was unexpected.

19 Q Well, my question was, he was at that meeting,
20 correct?

21 A He was at the meeting.

22 Q Okay. Now, I believe in your deposition you testified
23 that Budgie explained that Emeritus was not a skilled
24 nursing facility and therefore it did not use staffing
25 ratios. Do you recall that testimony?

26 A That was his explanation for why.

27 Q Okay. Listen to my question.

28 I'm going to move to strike.

1 THE WITNESS: Okay. I'm sorry.

2 THE COURT: Overruled.

3 Q (By MS. BADAWIYA) In your deposition do you recall
4 testifying that Budgie, um, explained that Emeritus was not
5 a skilled nursing facility and therefore did not use
6 staffing ratios --

7 MS. CLEMENT: Asked and answered, your Honor.

8 Q (By MS. BADAWIYA) Do you recall that?

9 THE WITNESS: That was part of his explanation --

10 THE COURT: Hold on. Hold on. It was basically the
11 same question which she responded to. Please rephrase.

12 MS. BADAWIYA: Okay.

13 THE COURT: Or ask another question.

14 MS. BADAWIYA: I'll ask another question, your Honor.

15 THE COURT: All right.

16 Q (By MS. BADAWIYA) I believe you testified in your
17 deposition that Mr. Amparo explained he came from a skilled
18 nursing facility background and that in that -- in -- in a
19 skilled nursing facility context there are staff ratios that
20 are determined by State and Federal regulations. Do you
21 recall that testimony -- do you recall that testimony that
22 you gave?

23 A Yes.

24 Q Okay. And I believe you also testified that Budgie
25 told the group that Emeritus was not a skilled nursing
26 facility but a social model where they were not going to
27 have staffing ratios. Do you recall that?

28 A I recall that was part of what he said.

1 MS. BADAWIYA: If we can display, um, Exhibit 5039,
2 your Honor, again, page 1.

3 THE COURT: All right.

4 Q (By MS. BADAWIYA) Are you familiar with this letter,
5 Ms. Rotella?

6 A Yes.

7 Q In reading the letter do you see any statement that
8 non-compliance of an Emeritus community would be discussed
9 at this meeting?

10 A Do I see how it could be included in here?

11 Q No. I'm asking you, do you see any statement in that
12 letter that says non-compliance of an Emeritus community
13 would be discussed?

14 A I do not see the words "non-compliance" discussed.

15 Q Oh, I'm sorry. Yes. Thank you. We can turn on the
16 lights.

17 Ms. Rotella, would you agree that each executive
18 director is responsible to determine how many caregivers
19 each shift every day, correct? It's the executive
20 director's responsibility to determine that?

21 A Yes, the executive director is responsible for the
22 labor staffing in each community.

23 Q Isn't it true that high occupancy -- achieving high
24 occupancy in a building, that goes hand in hand with
25 providing good care?

26 A No.

27 Q You don't think so?

28 A I -- I -- I either didn't understand your question or

1 I don't agree.

2 Q You testified about Emeritus wanted to have increased
3 occupancy in its buildings, correct?

4 A Of course.

5 Q Okay. And in order to achieve the goal of high
6 occupancy you have to provide good care?

7 A Um, not always. But, yes, normally you would. Unless
8 there was no other competition.

9 Q But there is a lot of competition in assisted living,
10 correct?

11 A Depends on the price point and it depends on the
12 market.

13 Q I'm almost done here.

14 I think you talked about some of the challenges facing
15 the California communities. Do you recall that?

16 A Um, today or --

17 Q Yes.

18 A -- in my deposition?

19 Q Well, both. Today and in your deposition you told --

20 A Yes.

21 Q One of the challenges you told this jury about was
22 there was a lot of vacancies in positions?

23 A Yes. I'm sorry. It's -- it's -- it's been a long
24 day.

25 Q Okay. And that was something that you tried to
26 address, um, during your three-month tenure, correct?

27 A Absolutely.

28 Q And the other issue that -- challenge in California

1 was the fact that there wasn't, um, enough qualified
2 applicants out there to fill the positions. Do you recall
3 that testimony?

4 A There weren't enough qualified applicants that
5 responded to our, Emeritus', advertisement.

6 Q Okay. And while you were there those three months you
7 made -- you implemented efforts to try to get more people
8 to -- qualified people to apply. Do you recall that?

9 A Yes.

10 MS. BADAWIYA: Okay. Those are all of the questions I
11 have.

12 THE COURT: Ms. Clement?

13 RE CROSS-EXAMINATION

14 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
15 the Plaintiffs:

16 Q Could the executive directors exceed their budget for
17 staffing?

18 A They did. Um, I -- I don't understand the word "could
19 they". Technically, of course.

20 Q Would there be repercussions if they exceeded their
21 budget for staffing?

22 MS. BADAWIYA: That lacks foundation, assumes facts --

23 THE COURT: She is asking. The objection is
24 overruled.

25 THE WITNESS: There could be, yes.

26 Q (By MS. CLEMENT) And what would those repercussions
27 be?

28 A Um, all the way up to termination, but certainly it

1 impacted negatively on their bonus.

2 MS. CLEMENT: Thank you. No further questions.

3 MS. BADAWIYA: No further questions.

4 THE COURT: Ladies and gentlemen, do you have any
5 questions for this witness?

6 Counsel, please approach.

7 (Sidebar conference was held.)

8 THE COURT: All right. Ladies and gentlemen, I'm
9 going to ask some of these questions. If the witness has
10 already answered these questions, um, I'm not going to take
11 the time to ask them again.

12 Please be careful when you send these questions in. I
13 think some of you are writing your questions even before you
14 are hearing the testimony. You need to go back and make
15 sure that the question has not been asked or only send me
16 the question if, in fact, you don't remember the answer.

17 Were the Sunrise facilities that you worked at prior
18 to -- actually, was the Sunrise company that you worked with
19 prior to coming to Emeritus, did they only have skilled
20 nursing facilities?

21 THE WITNESS: No. It was primarily assisted living.

22 THE COURT: You need to turn and respond to them. I
23 apologize.

24 THE WITNESS: No. Sunrise started as an assisted
25 living and memory care or the social model. They were not a
26 medical model until much later on.

27 THE COURT: If you know, what was meant that --
28 or what made the California division so bad compared to the

1 rest of the company?

2 THE WITNESS: I never got to, um, know a lot about the
3 other divisions in my three-month tenure. But each person
4 that I met with, um, focused primarily on, um, the financial
5 problems, um, with the division in terms of reduced amount
6 of revenue versus budget and over, um, expense compared to
7 budget. And so the bottom line was very negative compared
8 to what was promised to the investors.

9 THE COURT: How many documents from Emeritus do you
10 maintain in your home office? And this juror is asking like
11 is it a -- would it be the equivalent of like a file box
12 amount, a cabinet amount, more? In other words, please
13 describe something in quantity.

14 THE WITNESS: As I just moved, I can answer this
15 question very specifically. I have one small moving box
16 (indicating).

17 THE COURT: Are you a paid consultant for Ms. Clement?

18 THE WITNESS: Absolutely not.

19 THE COURT: Are you billing her for any of your hourly
20 time in this case?

21 THE WITNESS: Absolutely not.

22 THE COURT: You testified earlier that you reviewed
23 some or part of Mr. Amparo's testimony. From your review of
24 the testimony that you did review, do you believe that
25 Mr. Amparo was being untruthful in any way?

26 THE WITNESS: Yes.

27 THE COURT: Please be specific, in what way?

28 THE WITNESS: He talked, um, about the fact that we

1 did not track, um, a number of measures, quality measures in
2 the company, and we absolutely did. Emeritus tracked
3 everything that we possibly knew about. And so a lot of the
4 reports that he said didn't exist did exist.

5 Um, when he talked about the fact that our nurses or
6 that he was, um, a person who focused most of his energy on
7 caring for the seniors and nursing, um, that was a
8 significant overstatement of -- of his role. Um, I don't
9 think I ever spent any time with him, um, talking about
10 specific quality issues, um, or plans that weren't in
11 response to the Department of Social Services non-compliance
12 reports.

13 Most of the time we talked, um, about issues that were
14 related to, um, non-compliance, um, or about his
15 comprehensive, um -- he had a brand new comprehensive review
16 report which was supposed to be done for every one of the
17 communities. And so we would go in and we would monitor so
18 we could prepare ourselves to make sure that when the
19 Department of Social Services came in for a survey we would
20 have already done our homework and known how well we were
21 going to do and it would also identify troubled properties.
22 Those reports were frequently done with poor, um, results
23 and they weren't always, um -- they didn't always make it to
24 the defense -- I'm sorry, plaintiff.

25 And there were a number -- if I actually could go
26 through the testimony I could articulate --

27 THE COURT: Okay. We only want to know what you know
28 at this point.

1 Has Emeritus offered you a settlement in your current
2 case against them?

3 THE WITNESS: No.

4 THE COURT: Please finish what you were going to add
5 regarding your deposition and Emeritus not violating any
6 California rules.

7 THE WITNESS: Title 22 Emeritus violated many times
8 and that's how you end up with non-compliance reports or --
9 and that happens in most companies. Um, there are things
10 that you do right and things that you do wrong against Title
11 22. What I answered -- and Emeritus frequently violated
12 Title 22 as evidenced by the number of non-compliance
13 reports that we had, um, with the Department of Social
14 Services.

15 I did not believe that they -- at the time that I, um,
16 was at the February 24th meeting, I did not believe that
17 they had intentionally violated any regulatory rule. They
18 had not successfully complied with Title 22. If you report
19 to title -- to the Department of Social Services that you
20 made a mistake, you're in compliance. You're still out of
21 compliance with Title 22 for that incident, but you didn't
22 violate any regulatory rule. Everybody makes mistakes.

23 The, um, the challenge is when you make mistakes and
24 you don't report them, that's a major issue. And at the
25 February 29th -- at the February 24th meeting, I did not at
26 that time have knowledge that Emeritus did that.

27 THE COURT: Did Emeritus have a lot of competition in
28 the California region given its price point and the market

1 in the 2008, 2009 time frame, if you know?

2 THE WITNESS: I do very well know. Um, yes.
3 Emeritus, um -- most of Emeritus' communities were in what
4 we call B and C markets. They weren't the top flight
5 markets. Um, so in those B and C real estate markets, um,
6 there is a lot of land to be had for a lot less money than
7 in the type A markets.

8 So, um, in the B and C markets a lot of investors
9 would build new properties, so there was a lot of
10 competition in the B and C markets. In the A markets a lot
11 of investors didn't want to spend the money to buy the real
12 estate and to run, um, buildings in those A markets, so
13 there wasn't quite as much competition.

14 And the big issue in the Great Recession was there was
15 so much over-building, especially in the C markets, that,
16 um, a lot of the buildings that were just coming on-line,
17 that were just opening with 100 to 200 rooms in them, um,
18 were not filling. So there was a lot of excess capacity,
19 there was a lot of price negotiations, um, and there was a
20 lot of occupancy challenges.

21 THE COURT: Are you aware of any increase in the
22 residents' room rates during your tenure with Emeritus?

23 THE WITNESS: Absolutely.

24 THE COURT: Okay. With respect to the February 24th,
25 2010 meeting, did Melanie Werdel have any input into the
26 agenda that was created?

27 THE WITNESS: Absolutely. We had, um, a conference
28 call, which Melanie had suggested, and it was Melanie, it

1 was Liberty Stansberry, who was the head of HR, who, at the
2 same time as -- HR, we think of recruiting -- she was also
3 training. So she had, um, a number of people in her
4 organization that could have helped us with training.

5 So Melanie and Liberty, who reported to Melanie, um,
6 were both on the call with me, and we discussed what would
7 be valuable for her team to help the California market on
8 during this time that they were all coming down to southern
9 California. And we all talked about training and agreed to
10 training. They felt that was a great topic to be talking
11 about.

12 THE COURT: Okay. The question was just whether or
13 not she had input. The answer is yes --

14 THE WITNESS: Okay.

15 THE COURT: -- correct?

16 THE WITNESS: Correct.

17 THE COURT: Ms. Clement, do you wish to follow-up?

18 MS. CLEMENT: I'm Italian, too. That is funny.

19 FURTHER RECROSS-EXAMINATION

20 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
21 the Plaintiffs:

22 Q Um, okay. You said something about bottom line
23 negative versus the investor's expectation as being why
24 Emeritus thought California was a bad division. Do you
25 remember that?

26 A Absolutely.

27 Q Were you told that Emeritus, at corporate
28 headquarters, thought California was driving down the stock

1 prices?

2 A Absolutely.

3 MS. BADAWIYA: Your Honor, that is beyond the scope.

4 THE COURT: Overruled.

5 Q (By MS. CLEMENT) And "bad" didn't mean that Emeritus
6 in the California division wasn't profitable, it meant that
7 it wasn't hitting the expectations of the investment and the
8 senior management, true?

9 MS. BADAWIYA: That misstates her testimony, lacks
10 foundation.

11 THE COURT: She is leading. Overruled.

12 You can answer.

13 THE WITNESS: Yes.

14 THE COURT: Ms. Badawiya?

15 MS. BADAWIYA: I have a few, your Honor.

16 THE COURT: Go ahead.

17 FURTHER REDIRECT EXAMINATION

18 BY RIMA BADAWIYA, Attorney at Law, Counsel on behalf of the
19 Defendant:

20 Q Were you a direct report to Mr. Amparo?

21 A No.

22 Q Who, in your collaborative team management, was a
23 direct report to Mr. Amparo?

24 A Lisa Hulse.

25 Q Now, you were not working at Emeritus until November
26 of '09. You don't know what reports were being prepared for
27 Mr. Amparo in 2008, correct?

28 A Um, yes, that's correct.

1 MS. BADAWIYA: That is all I have.

2 THE COURT: Anything else? All right.

3 May we excuse this witness?

4 MS. CLEMENT: Yes, your Honor.

5 MS. BADAWIYA: Yes, your Honor.

6 THE COURT: Thank you very much. You're excused.

7 Ladies and gentlemen, leave your notebooks on the
8 chairs. Thank you for staying a little bit later. Remember
9 the admonitions.

10 I will see you at nine o'clock tomorrow morning.

11 **(The following proceedings were held in open court, outside**
12 **the presence of the jury:)**

13 THE COURT: What does tomorrow look like?

14 MS. CLEMENT: The rest of my clients, your Honor, and,
15 um, Anna delaCerde and --

16 MR. REID: Well, she is resting and then we are
17 starting our case at the end of her clients, so we had
18 Ms. delaCerde --

19 THE COURT: Excuse me. Did you just cut her off --

20 MR. REID: Well --

21 THE COURT: -- in answering a question to me? I will
22 hear from you, but I do not appreciate lawyers cutting each
23 other off.

24 MR. REID: I apologize to the Court and to Counsel.

25 THE COURT: All right. Thank you.

26 Who is tomorrow?

27 MS. CLEMENT: The rest of my clients, that would be
28 Nancee, Mark, Kathleen Boice. We also need to do the